



DELTA STEWARDSHIP COUNCIL

650 CAPITOL MALL, FIFTH FLOOR
SACRAMENTO, CALIFORNIA 95814
WWW.DELTACOUNCIL.CA.GOV
(916) 445-5511

Date: June 14, 2010

Chair
Phil Isenberg

To: Delta Stewardship Council Members

Members
Randy Fiorini
Gloria Gray
Patrick Johnston
Hank Nordhoff
Don Nottoli
Richard Roos-Collins

From: Joe Grindstaff, Interim Executive Officer

Subject: Meeting, June 24-25, 2010

Interim Executive Officer
P. Joseph Grindstaff

The agenda for our fourth meeting, and supporting material, is attached. Some additional handouts may be provided at the meeting. I offer some brief comments on the agenda and materials here for your perusal.

In addition to administrative items, a key part of the agenda on the first day will be the appointments to the Delta Independent Science Board as well as our continued discussion on the Bay Delta Conservation Plan. The second day will focus on the First Draft of the Interim Plan and providing direction for the Second Draft. There are other key issues as well.

Reallocation of Delta Council Funds for the Delta Plan Contract and Delta Protection Commission Funding Assistance Request (Agenda item 4 c)

The Delta Protection Commission has asked for an additional \$500,000 grant to begin work on their Economic Sustainability Plan. In addition, we request \$300,000 to fund the independent contract on BDCP and the allocation of \$500,000 in bridge funding for the Delta Plan. All funding will come from the current year (09-10) General Fund budget.

Appointments to the Delta Independent Science Board (Agenda item 7)

The Delta Stewardship Council is required by the Sacramento-San Joaquin Delta Reform Act of 2009 to appoint a Delta Independent Science Board (ISB) of no more than ten members as one of their early actions. Per direction from the Council at their April 1, 2010 meeting, the Interim Delta Lead Scientist issued a call for applications for appointment to the Delta ISB. The Interim Delta Lead Scientist, the previous CALFED Independent Science Board chair and the Delta Stewardship Council chair reviewed the applications and presented a list of 10 Delta Independent Science Board nominees for consideration by the Council. We recommend the Council appoint the ten recommended scientists to the ISB.

Bay Delta Conservation Plan (Agenda item 9)

The Bay Delta Conservation Plan (BDCP is perhaps the most controversial planning program currently underway in the State). It is a plan that would if successful, significantly restore Delta fisheries and at the same time increase water supply reliability. The Council is directed in the legislation to be a responsible agency and also has a potential appellate role with regard to the

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– State Water Code §85054

plan, which if it meets certain standards will be included in the Delta Plan. The Delta Independent Science Board, which you will be appointing also has a specifically legislated role to review the plan and the environmental documentation for the plan. This issue is one that the Council will hear about during every meeting for the next several months. The Council will need to be briefed and aware of these issues so that when the time comes they are prepared to make key decisions. Funding for this agenda item is addressed in item 4c.

Flood Grant for Department of Water Resources (Agenda item 11)

At the May 2010 Council meeting, DWR presented a proposal for Proposition 1E funding expenditures. In response to a Proposal Solicitation Package (PSP), DWR selected 10 projects for levee improvements which met the statutory criteria, for a total State cost share of \$35.2 million. These projects propose to improve levees which protect islands upon which the East Bay Municipal Utility District's (EBMUD) Mokelumne Aqueduct traverses.

During the course of discussions at the May 2010 Council meeting, Council members requested further information from DWR before the Council could adequately consider approving the proposed levee improvement projects as consistent with the Council's policy objectives and direction in the development of a Delta Plan. Two significant issues must be resolved to move forward with project consideration: CEQA compliance and Council indemnification.

Staff recommends a two-stage approval process. Stage 1 would be to approve funds for project planning purposes (in which CEQA is not required), and stage 2 would be to approve for project construction subsequent to completion of all relevant CEQA activities, documentation and indemnification. We recommend the Council consider the materials provided by the Department of Water Resources (DWR) regarding Proposition 1E funding expenditures for levee improvements.

Discuss First Draft Interim Plan and Provide Direction for Second Draft
(Water Code 85084 and Water Code 85300) (Agenda item 15)

In this item we expect to take at least a couple hours to discuss the draft interim plan, the Delta plan outlines, and adopt a schedule that should get us to our legislatively mandated adoption of a Delta Plan by January 1, 2012. The document is really a framework and in addition a thorough review will be completed to identify how it might be applied to a couple key objectives. The last part of the discussion is what we do with projects that clearly will be covered actions under the law and which might be before the Council in the future.

The law says the Council should have early consultation. The Delta Wetlands Project committee members came to us and asked us verbally and through their written submission of suggestions on the Interim Plan to consult with them. They provided an Environmental Impact Report which we need to review. We are asking the Council to direct staff to start this process which we will use during the next 18 months until the Delta Plan goes into effect.

If I can answer any questions or provide any information, please contact me at (916) 445-4500 or jgrindstaff@deltacouncil.ca.gov



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June 14, 2010

-- AGENDA --

**Meeting of the DELTA STEWARDSHIP COUNCIL
Thursday, June 24 and Friday, June 25, 2010
Secretary of State's Office Auditorium
1500 11th Street, Sacramento, California 95814**

THE AGENDA ITEMS LISTED BELOW MAY BE CONSIDERED IN A DIFFERENT ORDER AND HEARD ON EITHER DAY OF THE COUNCIL MEETING PURSUANT TO THE DETERMINATION OF THE COUNCIL CHAIR. AGENDA ITEMS NOTED BELOW WHICH ARE NOT COMPLETED ON JUNE 24, WILL BE HEARD ON JUNE 25, BEGINNING AT 9:00 A.M.

At the discretion of the Delta Stewardship Council, all items appearing on this agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action.

DAY 1: Thursday, June 24, 2010, (10:00 a.m. – 4:00 p.m.)

1. Welcome and Introductions
2. Roll Call – Establish a Quorum (Water Code §85210.5)
3. Chair's Report
4. Interim Executive Officer's Report (**Discussion/Action Items**)
 - a. Legislative and Legal Update
 - b. Follow-up on Informational Requests from Council
 - c. Contracts

Attachment 1: Correspondence from Delta Protection Commission
5. Consent Calendar
(Items for consent calendar are expected to be routine and non-controversial. The Council will be asked to approve item 5a at one time without discussion. If any Council member, staff, or interested person requests that an item be removed from the consent calendar, it will be taken up in the regular agenda order.)
 - a. May 27-28, 2010 Meeting Summary
6. Interim Lead Scientist's Report
7. Appointments to the Delta Independent Science Board (**Action Item**) (Water Code §85080)

Attachment 1: Affiliation and Areas of Expertise for the 10 Individuals Recommended for Appointment to the Delta ISB

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– State Water Code §85054

8. **Administrative Procedures Governing Appeals (Water Code § 85225.30)**
Attachment 1: Draft Administrative Procedures Governing Appeals
 9. **Bay Delta Conservation Plan (Discussion/Action Items)**
Memo to Council Members from Keith Coolidge regarding BDCP Update – Governance
 - a. **Adopt Process to Retain Independent Consultant Assistance for Review of BDCP Issues (Water Code §85210(b) and §85320)**
Attachment 1: Invitation to Submit Qualifications for Independent Consultant to Review BDCP
 - b. **Natural Communities Conservation Plans (NCCP)/Habitat Conservation Plans (HCP) Presentation (Water Code §85320(b)(1); (d); (e))**
Attachment 1: Materials from Department of Fish and Game
 - c. **Draft Letter Providing “Responsible Agency” Scoping Comments (Water Code §85320(c))**
Attachment 1: Draft Letter
Attachment 2: Notice of Preparation
Attachment 3: Federal Agencies White Paper on Application of the 5-point Policy to the BDCP
 10. **Revised Staff Report on Briefing of the Central Valley Flood Management Plan**
PowerPoint Presentation
 11. **Revised Staff Report on Approval of Department of Water Resources Proposition 1E Expenditures for Selected Levee Projects (Action Item) (Water Code §83002 (a)(1))**
PowerPoint Presentation
Attachment 1: DWR FESSRO Staff Recommendation, Delta Aqueduct Protection Projects
Attachment 2: Letter to Phil Isenberg from EBMUD, dated June 14, 2010
Attachment 3: Jones Tract Flooding 2004 (#1)
Attachment 4: Jones Tract Flooding 1980 (#2)
Attachment 5: Jones Tract Flooding 1980 (#3)
Attachment 6: Trapper Slough Levee
Attachment 7: Island Assets and Details
Attachment 8: Delta Map
Attachment 9: Copy of Paterno Decision
Attachment 10: Materials from Joint Assembly Hearing
Attachment 11: CEQA Notices of Exemption
Attachment 12: Specific Project Descriptions
 12. **Public Comment**
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DAY 2: Friday, June 25, 2010 (9:00 a.m. – 4:00 p.m.)

13. **Call to Order**
14. **Roll Call – Establish Quorum (Water Code §85210.5)**

15. Discuss First Draft Interim Plan and Provide Direction for Second Draft (Action Item)
(Water Code §85084 and Water Code §85300)

Attachment 1: First Draft-Interim Plan

Attachment 2: Delta Activities Timeline

16. Public Comment

17. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date.

Adjourn

Other materials included in binder:

- Correspondence http://www.deltacouncil.ca.gov/public_involvement/correspondence.html
- DWR News/People

Tracked Bills - 2010 Delta Stewardship Council

- [AB 1585](#) **(Committee on Accountability and Administrative Rev) State government: reporting requirements: required repealer.**
Introduced: 7/9/2009
Last Amend: 2/8/2010
Status: 2/26/2010-Chaptered by the Secretary of State, Chapter Number 7, Statutes of 2010
Location: 2/26/2010-A. CHAPTERED
Summary: Would require that the report submitted by a state or local agency to the Members of either house of the Legislature generally, be submitted as a printed copy to both the Legislative Counsel and the Secretary of the Senate, and as an electronic copy to the Chief Clerk of the Assembly. The bill would further require that the summary of a report made by a state agency to either house of the Legislature be submitted to the Members of the appropriate house by that agency, instead of by the Legislative Counsel. The bill would also specifically require the Legislative Counsel to maintain the list of state and local agencies' reports in a specified manner, including maintaining the list in an electronic format and deleting specified reports from the list. This bill contains other related provisions.
- [AB 1594](#) **(Huber D) Sacramento-San Joaquin Delta: peripheral canal.**
Introduced: 1/4/2010
Last Amend: 4/15/2010
Status: 5/7/2010-Failed Deadline pursuant to Rule 61(b)(6). (Last location was W.,P. & W. on 4/27/2010)
Location: 5/12/2010-A. DEAD
Summary: Would prohibit the construction of a peripheral canal, as defined, that conveys water from a diversion point in the Sacramento River to a location south of the Sacramento-San Joaquin Delta, unless expressly authorized by the Legislature. The bill would require the Legislative Analyst's Office to complete an economic feasibility analysis prior to the enactment of a statute authorizing the construction of a peripheral canal. The bill would prohibit the construction and operation of a peripheral canal from diminishing or negatively affecting the water supplies, water rights, or quality of water for water users within the Sacramento-San Joaquin Delta watershed, or imposing any new burdens on infrastructure within, or financial burdens on persons residing in, the Delta or the Delta watershed.
- [AB 1659](#) **(Huber D) State government: agency repeals.**
Introduced: 1/19/2010
Last Amend: 6/2/2010
Status: 6/7/2010-In Senate. Read first time. To Com. on RLS. for assignment.
Location: 6/7/2010-S. RLS.
Summary: Would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies and to conduct a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. The bill would define an "eligible agency" as an entity of state government, however denominated, for which a date for repeal has been established by statute on or after January 1, 2011. The bill would require each eligible agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and would require that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate and the Speaker of the Assembly, and certain aspects of its operating procedure.
- [AB 1677](#) **(Caballero D) Public resources.**
Introduced: 1/25/2010
Last Amend: 4/8/2010
Status: 6/9/2010-From committee: Amend, and do pass as amended. To Consent Calendar. (June 9).
Location: 6/9/2010-S. CONSENT CALENDAR
Calendar: 6/14/2010 #10 SENATE ASSEMBLY BILLS-SECOND READING FILE
Summary: Would grant that extension to an urban wholesale water supplier, as specified. This bill contains other related provisions and other existing laws.
- [AB 1780](#) **(Yamada D) Delta Stewardship Council: certifications of consistency.**
Introduced: 2/9/2010
Status: 5/7/2010-Failed Deadline pursuant to Rule 61(b)(6). (Last location was PRINT on 2/9/2010)
Location: 5/12/2010-A. DEAD
Summary: Existing law requires the state or a local public agency that proposes to undertake certain actions within the boundaries of the Sacramento-San Joaquin Delta or the Suisun Marsh to prepare, and submit to the Delta Stewardship Council, a specified written certification of consistency with a prescribed Delta Plan prior to taking those actions. This bill would make a technical, nonsubstantive change to this requirement.
- [AB 1787](#) **(Swanson D) Administrative procedure: regulations: narrative description.**
Introduced: 2/10/2010

Last Amend: 4/7/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was APPR. SUSPENSE FILE on 5/5/2010)

Location: 6/4/2010-A. DEAD

Summary: Would additionally require the agency to include a narrative description of the additions to, and deletions from, the California Code of Regulations , as specified, and would state the intent of the Legislature to require state agencies to provide regulatory amendments in a narrative format that can be accurately translated by software used by the visually impaired .

[AB 1797](#) **(Berryhill, Bill R) State Water Resources Development System: Delta Corridors Plan.**

Introduced: 2/10/2010

Last Amend: 4/7/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was APPR. SUSPENSE FILE on 5/28/2010)

Location: 6/4/2010-A. DEAD

Summary: Would require the department to undertake an expedited evaluation and feasibility study with regard to the implementation of a specified Delta Corridors Plan as part of the State Water Resources Development System. The bill would require the department to consult with the Department of Fish and Game to study specified impacts and benefits of the Delta Corridors Plan and to include in the study an assessment of the incorporation of the Two-Gates Fish Demonstration Project managed by the United States Bureau of Reclamation into the Delta Corridors Plan. The department would be required to prepare and submit to the Legislature, on or before January 1, 2012, a report that includes its feasibility findings. If the department determines the implementation of the plan is feasible, the department would be required to include recommendations with regard to specific facilities to be constructed, and to identify potential funding sources, for the purposes of implementing the plan. This bill contains other related provisions and other existing laws.

[AB 1993](#) **(Strickland, Audra R) Reports: declarations.**

Introduced: 2/17/2010

Last Amend: 5/20/2010

Status: 6/3/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/3/2010-S. RLS.

Summary: Would require any entity submitting a written report to the Legislature, a Member of the Legislature, or a committee of the Legislature to include a signed statement by the head of the entity submitting the written report declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge.

[AB 2006](#) **(Hill D) Governmental linguistics.**

Introduced: 2/17/2010

Last Amend: 4/6/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was APPR. SUSPENSE FILE on 4/14/2010)

Location: 6/4/2010-A. DEAD

Summary: Would until January 1, 2015, require the California Research Bureau to survey state agency documents to determine the extent to which existing documents use language that suggests a particular religious faith or sect. This bill would also require the bureau to consult with experts to identify religiously neutral and inclusive terms to replace existing language and to identify any legal or fiscal ramifications, as specified. This bill would require the bureau to submit a report based on its findings to the Chief Clerk of the Assembly, the Secretary of the Senate, and the Judiciary Committees of the Assembly and Senate.

[AB 2049](#) **(Arambula I) Transfers of water: agricultural use to municipal use.**

Introduced: 2/18/2010

Last Amend: 5/28/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was THIRD READING on 6/3/2010)

Location: 6/4/2010-A. DEAD

Summary: Would prohibit the department, with respect to a contractual entitlement to water from the State Water Project, and the state board, with respect to any other transfer of water or water rights, from approving the transfer of surface water or water rights, or a portion of a contractual entitlement to water from the State Water Project, from agricultural use to municipal use for a period of 20 years or more, unless the water user provides to the department or the state board, as applicable, a written evaluation of the economic, social, and environmental effects of the transfer upon the service area from which the water is to be transferred. The bill would prohibit a water user from replacing specified surface water that is transferred from agricultural use to municipal use with groundwater, unless the groundwater basin of the service area from which the water is to be transferred is monitored in accordance with specified requirements. The bill would require the department and the state board to charge specified fees to a water user that is subject to these provisions. This bill contains other existing laws.

[AB 2092](#) **(Huffman D) Delta Stewardship Council: planning and administration: long-term financing plan.**

Introduced: 2/18/2010

Last Amend: 4/20/2010

Status: 6/3/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/3/2010-S. RLS.

Summary: Would require the council to develop a long term financing plan to pay for the costs of implementing the Delta Plan and for the ongoing administration of the council by January 1, 2013. The bill would require the long term financing plan to include fee proposals to pay for private benefits associated with implementation of the Delta Plan. The bill would prohibit the council from adopting a fee for these purposes unless authorized by statute. The bill would require the council, before adopting and collecting fees or long term revenue sources, to seek to obtain early funding contributions from entities that may benefit from implementation of the Delta Plan and to track those contributions to provide credit against future fee or funding requirements .

[AB 2146](#) **(Berryhill, Bill R) Water resources: bond funds: appropriations.**

Introduced: 2/18/2010

Last Amend: 4/5/2010

Status: 4/23/2010-Failed Deadline pursuant to Rule 61(b)(5). (Last location was W.,P. & W. on 4/6/2010)

Location: 4/23/2010-A. DEAD

Summary: Would appropriate an unspecified amount from these funds for purposes of certain projects.

[AB 2304](#) **(Huffman D) Groundwater management plans: components.**

Introduced: 2/19/2010

Last Amend: 5/28/2010

Status: 6/3/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/3/2010-S. RLS.

Summary: Would require the local agency, upon written request, to provide specified information relating to the proposed groundwater management plan to an interested person. The bill would require the local agency to provide each of those interested persons with a specified notice at least 30 days prior to the commencement of the second hearing to determine whether to adopt the plan. This bill contains other related provisions and other existing laws.

[AB 2336](#) **(Fuller R) Delta Stewardship Council.**

Introduced: 2/19/2010

Last Amend: 5/17/2010

Status: 6/3/2010-Referred to Com. on N.R. & W.

Location: 6/3/2010-S. N.R. & W.

Summary: Would require the council, in the course of developing and adopting the Delta Plan, to direct the board to conduct an assessment of certain stressors on populations of native fish species in the Delta, the Sacramento and San Joaquin rivers, and the tributaries to those rivers below the rim dams of the central valley, and recommend changes in statute and actions by state agencies to remedy the situation in as timely a manner as possible.

[AB 2376](#) **(Huffman D) Fish and wildlife: strategic vision.**

Introduced: 2/19/2010

Last Amend: 5/28/2010

Status: 6/3/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/3/2010-S. RLS.

Summary: Would require the Secretary of the Natural Resources Agency to convene a committee, with membership as prescribed, to develop and submit to the Governor and Legislature, before July 1, 2012, a strategic vision for the department and the commission that addresses specified matters relating to state fish and wildlife resource management.

[AB 2405](#) **(Buchanan D) Delta flood protection.**

Introduced: 2/19/2010

Status: 5/7/2010-Failed Deadline pursuant to Rule 61(b)(6). (Last location was W.,P. & W. on 4/8/2010)

Location: 5/12/2010-A. DEAD

Summary: Existing law governing levee maintenance in the Sacramento-San Joaquin Delta requires the Department of Water Resources to develop and submit to the Central Valley Flood Protection Board, for adoption by the board, criteria for the maintenance and improvement of levees that are not project facilities under the State Water Resources Law of 1945, known as nonproject levees, as prescribed. If the department finds that the annual routine maintenance work specified in the plans approved by the board is not being performed in accordance with the agreement entered into between the local agency and the board, the department is authorized to establish a maintenance area and thereafter annually maintain the nonproject levee in accordance with those plans and subject to specified provisions of law. This bill would make technical, nonsubstantive changes to that authorization.

[AB 2420](#) **(Huffman D) Protected species: incidental take: consistency determinations.**

Introduced: 2/19/2010

Last Amend: 3/24/2010

Status: 4/23/2010-Failed Deadline pursuant to Rule 61(b)(5). (Last location was W.,P. & W. on 3/25/2010)

Location: 4/23/2010-A. DEAD

Summary: Would require the inclusion in the notice of a specified additional information, including

copy of the biological opinion along with an incidental take statement or a copy of the conservation plan with an incidental take permit. The bill would authorize the department to adopt regulations to implement those revised incidental take and consistency determination provisions. This bill contains other existing laws.

AB 2421 (Nielsen R) Water development projects: Sacramento-San Joaquin watersheds.

Introduced: 2/19/2010

Status: 5/7/2010-Failed Deadline pursuant to Rule 61(b)(6). (Last location was PRINT on 2/19/2010)

Location: 5/12/2010-A. DEAD

Summary: Existing law adopts and authorizes specified projects in areas within the City of Sacramento and the Counties of Sacramento and Sutter at an estimated cost to the state of the sum that may be appropriated by the Legislature for state participation upon the recommendation and advice of the Department of Water Resources or the Reclamation Board. This bill would make technical, nonsubstantive changes to those provisions.

AB 2529 (Fuentes D) State agencies: regulations: review.

Introduced: 2/19/2010

Last Amend: 5/28/2010

Status: 6/7/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/7/2010-S. RLS.

Summary: Would require the State Air Resources Board, Energy Commission, Department of Fish and Game, and the Department of Housing and Community Development to complete a related economic impacts analysis, as defined, for any proposed regulation that will have an adverse economic impact on California business enterprises and individuals in an amount exceeding \$10,000,000, as specified. This bill would also require these entities to submit the related economic impacts analysis to a prescribed peer review process, if certain conditions occur. This bill contains other related provisions.

AB 2575 (Chesbro D) Resources: watersheds.

Introduced: 2/19/2010

Last Amend: 5/28/2010

Status: 6/3/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/3/2010-S. RLS.

Summary: Would require the department and the board when implementing a pilot project to protect and restore the riparian zone in watersheds with listed anadromous salmonids to, among other things, ensure that the industry, agencies, and the public have equal opportunity to participate in the development of the pilot project in a transparent manner and that the pilot project have certain goals.

AB 2669 (V. Manuel Perez D) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006: integrated regional water management plans: pilot program: disadvantaged communities.

Introduced: 2/19/2010

Last Amend: 6/1/2010

Status: 6/7/2010-In Senate. Read first time. To Com. on RLS. for assignment.

Location: 6/7/2010-S. RLS.

Summary: Would express the intent of the Legislature to encourage the department, if it elects to expend the moneys appropriated for integrated regional water management projects with interregional or statewide benefits to implement a pilot program for disadvantaged community assistance, to require a recipient of funds under the pilot program to (1) comply with a prescribed community engagement process, (2) give consideration to organizations with relevant experience, as specified, for purposes of contracting or subcontracting services to complete pilot program requirements, or (3) consider specified methods to provide cost savings for high-priority water-related problems affecting disadvantaged communities. This bill contains other existing laws.

AJR 38 (Caballero D) Public resources: Two-Gates Fish Protection Demonstration Project.

Introduced: 2/25/2010

Last Amend: 5/24/2010

Status: 5/25/2010-In Senate. To Com. on RLS.

Location: 5/25/2010-S. RLS.

Summary: Would request the United States Department of the Interior to prioritize completion of its study of the Two-Gates Fish Protection Demonstration Project in the Sacramento-San Joaquin Delta.

SB 565 (Pavley D) Water resources.

Introduced: 2/27/2009

Last Amend: 5/20/2010

Status: 5/20/2010-From committee with author's amendments. Read second time. Amended. Re-referred to Com. on W., P. & W. (May 20 amended measure version corrected May 24.)

Location: 5/20/2010-A. W., P. & W.

Calendar: 6/15/2010 9 a.m. - State Capitol, Room 437 ASSEMBLY WATER, PARKS AND WILDLIFE, HUFFMAN, Chair

Summary: Would expand the exemption to other provisions relating to water use, including provisions that require the payment of fees to the State Water Resources Control Board (board) for official services relating to statements of water diversion and use. This bill contains other related provisions and other existing laws.

- [SB 808](#) (Wolk D) Delta levee maintenance.**
Introduced: 2/27/2009
Last Amend: 1/25/2010
Status: 6/3/2010-Chaptered by the Secretary of State, Chapter Number 23, Statutes of 2010
Location: 6/4/2010-S. CHAPTERED
Summary: Would declare legislative intent to reimburse up to 75% of those described costs until July 1, 2013, and on and after that date, to reimburse up to 50% of those described costs. This bill contains other related provisions and other existing laws.
- [SB 918](#) (Pavley D) Water recycling.**
Introduced: 2/1/2010
Last Amend: 6/1/2010
Status: 6/2/2010-In Assembly. Read first time. Held at Desk.
Location: 6/2/2010-A. DESK
Summary: Would require the State Department of Public Health to adopt uniform water recycling criteria for indirect potable water reuse for groundwater recharge, as defined, by December 31, 2013 . The bill would require the department to develop and adopt uniform water recycling criteria for surface water augmentation, as defined, by December 31, 2016 , if a specified expert panel convened pursuant to the bill finds that the criteria would adequately protect public health . The bill would require the department to investigate the feasibility of developing uniform water recycling criteria for direct potable reuse and to provide a final report on that investigation to the Legislature by December 31, 2016. The bill, from July 1, 2011, to June 30, 2017, inclusive, would require funds generated by the imposition of specified liabilities for violations of water quality requirements to be made available, upon appropriation by the Legislature, to the department for purposes of developing and adopting the water recycling criteria .
- [SB 934](#) (Cogdill R) Water Resources: The California Water Plan.**
Introduced: 2/2/2010
Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was RLS. on 2/18/2010)
Location: 6/4/2010-S. DEAD
Summary: Under existing law, the Department of Water Resources operates the State Water Project and exercises specified water planning functions. Existing law requires the department to update The California Water Plan, which is a plan for the conservation, development, and use of the water resources of the state, every 5 years. This bill would make technical, nonsubstantive changes to these provisions.
- [SB 942](#) (Dutton R) Regulations: review process.**
Introduced: 2/3/2010
Last Amend: 5/24/2010
Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was APPR. SUSPENSE FILE on 5/27/2010)
Location: 6/4/2010-S. DEAD
Summary: Would establish an Economic Analysis Unit within the office. The bill would require agencies to make publicly available and submit to the unit specified cost estimates that pertain to a proposed regulation and specified information used to develop the cost estimates, as prescribed. The bill would require the unit to review final revised cost estimates for regulations that the agency determines to have a cost estimate of \$50,000,000 or more. The bill also authorizes a stakeholder to petition the director of the office to direct the unit to review a regulation that the stakeholder believes has an actual cost of \$50,000,000 or more . The bill requires the unit to develop an appropriate methodology for reviewing agency cost estimates for proposed regulations and to approve or reject the cost estimates , as specified.
- [SB 1013](#) (Denham R) Safe, Clean, Reliable Water Supply Act: Central Valley Project Improvement Program.**
Introduced: 2/10/2010
Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was RLS. on 2/18/2010)
Location: 6/4/2010-S. DEAD
Summary: The Safe, Clean, Reliable Water Supply Act, a bond act approved by the voters as Proposition 204 at the November 5, 1996, statewide general election, authorizes the issuance and sale of a total of \$995,000,000 in general obligation bonds. The act continuously appropriates \$93,000,000 of the proceeds from the sale of those bonds to the Controller for allocation to the Department of Fish and Game or the Department of Water Resources to pay the state's share of the costs for fish and wildlife restoration measures required pursuant to the federal Central Valley Project Improvement Act and specified administrative costs of the Department of Fish and Game and the Department of Water Resources. This bill would make technical, nonsubstantive changes to those provisions.
- [SB 1014](#) (Denham R) Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act: groundwater storage projects.**
Introduced: 2/10/2010
Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was RLS. on 2/18/2010)
Location: 6/4/2010-S. DEAD
Summary: The Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond

Act (bond act), approved by the voters as Proposition 13 at the March 7, 2000, statewide primary election, authorizes the issuance and sale of a total of \$1,970,000,000 in general obligation bonds. The bond act requires that \$630,000,000 of the proceeds from the sale of those bonds be allocated for purposes of water supply reliability projects. Existing law authorizes the Department of Water Resources, upon appropriation by the Legislature, to use \$200,000,000 from the moneys allocated for water supply reliability projects for purposes of providing grants for groundwater storage projects that produce water supply benefits for local agencies and water users. The bond act defines various terms for these purposes. This bill would make technical, nonsubstantive changes to those definitions.

SB 1173 (Wolk D) Recycled water.

Introduced: 2/18/2010

Last Amend: 3/24/2010

Status: 6/3/2010-To Coms. on W.,P. & W. and E.S. & T.M.

Location: 6/3/2010-A. W.,P. & W.

Calendar: 6/15/2010 9 a.m. - State Capitol, Room 437 ASSEMBLY WATER, PARKS AND WILDLIFE, HUFFMAN, Chair

Summary: Would define raw water for purposes of the act. This bill contains other related provisions and other existing laws.

SB 1234 (Kehoe D) Water: unreasonable use.

Introduced: 2/19/2010

Status: 4/23/2010-Failed Deadline pursuant to Rule 61(b)(5). (Last location was N.R. & W. on 3/4/2010)

Location: 4/23/2010-S. DEAD

Summary: Would require the board, by January 1, 2012, to adopt regulations to identify unreasonable uses of water during various periods of water shortage, as specified, and would set forth related legislative findings and declarations.

SB 1334 (Wolk D) Natural community conservation plans.

Introduced: 2/19/2010

Last Amend: 5/10/2010

Status: 6/2/2010-In Assembly. Read first time. Held at Desk.

Location: 6/2/2010-A. DESK

Summary: Would include in the required finding that the plan has been developed consistent with the planning agreement process an additional finding of cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan.

SB 1351 (Wright D) California Global Warming Solutions Act of 2006: State Air Resources Board regulations.

Introduced: 2/19/2010

Last Amend: 4/28/2010

Status: 6/3/2010-To Com. on NAT. RES.

Location: 6/3/2010-A. NAT. RES.

Summary: Would require the state board to make available to the public, at the time that the state board adopts a regulation pursuant to the act, any implementation schedule that is required to initiate compliance with that regulation. The state board would be required to make available to the public on the state board's Internet Web site any reporting form that is required to initiate compliance with a regulation adopted pursuant to the act at least 45 days prior to the date required for filing that form in accordance with the implementation schedule.

SB 1443 (Simitian D) Sacramento-San Joaquin Delta Multi-Hazard Coordination Task Force.

Introduced: 2/19/2010

Last Amend: 4/14/2010

Status: 5/28/2010-To Com. on W.,P. & W.

Location: 5/28/2010-A. W.,P. & W.

Calendar: 6/29/2010 9 a.m. - State Capitol, Room 437 ASSEMBLY WATER, PARKS AND WILDLIFE, HUFFMAN, Chair

Summary: Would provide that the task force shall cease to exist upon the submission of the report . The bill would change the repeal date of these provisions to January 1, 2013.

SB 1450 (Simitian D) Water: Delta Stewardship Council: contracts.

Introduced: 2/19/2010

Last Amend: 3/23/2010

Status: 5/28/2010-To Com. on W.,P. & W.

Location: 5/28/2010-A. W.,P. & W.

Calendar: 6/29/2010 9 a.m. - State Capitol, Room 437 ASSEMBLY WATER, PARKS AND WILDLIFE, HUFFMAN, Chair

Summary: Would provide that a contract made or entered into by the department is not binding on the council unless the contract is approved by the council. This bill contains other existing laws.

SB 1468 (Padilla D) Sacramento-San Joaquin Delta.

Introduced: 2/19/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was RLS. on 3/11/2010)

Location: 6/4/2010-S. DEAD

Summary: Would state legislative findings and declarations relative to the development of the Bay Delta Conservation Plan and the activities of the Delta Vision Blue Ribbon Task Force and the Delta Vision Committee.

SB 1469 (Simitian D) Sacramento-San Joaquin Delta: California Water Plan: water quality.

Introduced: 2/19/2010

Last Amend: 4/14/2010

Status: 6/4/2010-Failed Deadline pursuant to Rule 61(b)(11). (Last location was APPR. SUSPENSE FILE on 5/27/2010)

Location: 6/4/2010-S. DEAD

Summary: Would require the board , by January 1, 2012, to identify all parties, including public and private parties, that benefit from waters originating in the Sacramento-San Joaquin Delta watershed and whose activities impact the Delta watershed. The bill would also require the board , by that date, to develop a process for determining the degree of responsibility attributable to each of the identified parties for physical and environmental impacts on the Delta. This bill contains other related provisions and other existing laws.

SB 1478 (Committee on Natural Resources and Water) Water conservation: urban water management.

Introduced: 3/2/2010

Last Amend: 4/5/2010

Status: 5/13/2010-To Com. on W.,P. & W.

Location: 5/13/2010-A. W.,P. & W.

Calendar: 6/15/2010 9 a.m. - State Capitol, Room 437 ASSEMBLY WATER, PARKS AND WILDLIFE, HUFFMAN, Chair

Summary: Would grant the extension for adoption of an urban water management plan that is due in 2010 to an urban wholesale water supplier to permit coordination between an urban wholesale water supplier and urban retail water suppliers . The bill would revise the requirements that apply to an urban retail water supplier that supplies water to that described military installation by requiring the supplier to consider the prior water conservation of that military installation for the purpose of preparing that implementation plan. This bill contains other existing laws.

SBX8 45 (Wolk D) Water supply reliability, flood control, water resources management, and wildlife preservation.

Introduced: 2/12/2010

Status: 3/15/2010-Final adjournment: Eighth Extraordinary Session on 3/15/2010. (Last location was RLS. on 2/12/2010)

Location: 3/15/2010-S. DEAD

Summary: with regard to those bond funds, would appropriate \$569,900,000 to be allocated as follows: of the funds made available pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006, \$200,000,000 to the Department of Water Resources for flood protection projects and \$70,000,000 to the department for grants for stormwater flood management projects; and, of the funds made available pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, \$250,000,000 to the department for integrated regional water management grants and expenditures for programs and projects to increase local water supply reliability, \$9,900,000 to the department to implement specified urban and agricultural water management planning and water demand reduction programs, \$32,000,000 to the department for flood control projects in the Sacramento-San Joaquin Delta designed to reduce the potential for levee failures, and \$8,000,000 to the Wildlife Conservation Board for grants to local agencies to implement, or assist in the establishment of, specified natural community conservation plans. This bill contains other related provisions and other existing laws.

Total Measures: 39

Total Tracking Forms: 39

Informational Follow-up Items
Delta Stewardship Council
May 27-28, 2010

The following is a list of questions and follow-up tasks requested by the Council members during the May 27, 2010, Delta Stewardship Council Meeting. This list does not include details about formal actions taken by the Council, which will be documented in the official meeting summary.

The following responses were provided by several organizations: Department of Water Resources (DWR), Delta Stewardship Council (DSC) & Sacramento-San Joaquin Delta Conservancy (SSJDC). If you have any questions please contact Angela D'Ambrosio at (916) 445-5797.

1. Council expressed interest in getting a briefing from Department of Water Resources staff about Australia's experience with drought and also requested a copy of a recent article published in DWR News/People Magazine.

DWR Response: *A DWR representative is available to make a presentation at a future Council meeting regarding the Australia/California water connection. An attachment is included of the requested recent article that appeared in the DWR News/People magazine and is included in the back of your binder.*

2. Council requested a copy of Tom Zuckerman's Water Plan for the 21st Century.

SSJDC Response:

http://deltavision.ca.gov/docs/externalvisions/EV2_A_Water_Plan_for_the_21st_Century.pdf

3. Council requested a glossary of terms and acronyms.

DSC Response: A glossary of Delta and Suisun Initiatives can be found at:

http://www.deltavision.ca.gov/TimelineAndGlossary/DV_BRTF_ArticulationGlossary_07-17-08.pdf

A glossary of general water terms can be found here:

<http://www.waterplan.water.ca.gov/docs/cwpu2005/vol1/v1glossary.pdf>

4. Council requested copies of the 2005 Flood White Paper from DWR.

DSC Response:

http://www.water.ca.gov/pubs/flood/flood_warnings_responding_to_california%27s_flood_crisis/011005floodwarnings.pdf

5. Provide a briefing to the council on the impacts of species to species management and how we can avoid conflicts in both management practices from one species to another?

DSC Response: *This item will be discussed under Agenda Item 9 during the Council meeting on June 24, 2010.*

6. Provide a timeline to the Council which clearly illustrates the Delta Plan due dates and all other inter-related plans.

DSC Response: *This item will be discussed under Agenda item 15 during the Council meeting on June 25, 2010.*

7. Council requested a regular update (possibly quarterly) from the Delta Protection Commission.

DSC Response: *A quarterly briefing will be scheduled.*

8. Council requested a copy of the IA contract with DPC.

DSC Response: *Copies of the contract were provided to the Board members*

9. Regarding the Science Grants, council would like a description of the nexus between the work that's being completed and long-term improvement.

DSC Response: *The connection between the science grants recommended for approval and long-term improvement will be provided to the Council in the staff report accompanying the request for grant approval.*

10. For the interim plan, clearly define the time period it covers and the purpose of the interim plan and how it relates to the overall delta plan.

DSC Response: *This is addressed in the first draft Interim Plan, included in the June 2010 Council meeting package and will be discussed at the Council meeting.*

11. Council requested to be included in the selection of an independent BDCP representative and the overall development of the SOW. Council created a subcommittee of 2 members.

DSC Response: *This has been completed and the subcommittee of 2 members has been established.*

12. Draft a letter to send to each public agency regarding their assistance and involvement with the development of the Delta Plan.

DSC Response: *Underway and expected to be completed before the June 2010 Council meeting.*

13. Council requested that staff invite Ray Seed to participate in a discussion regarding flood control.

DSC Response: *This has been completed.*

14. Council requested a Delta Tour be scheduled in July/August.

DSC Response: *Two tours are being arranged – a ground tour and an aerial tour.*

15. Council requested staff to develop a communication plan with a focus on Delta interests.

DSC Response: *Communications Plan is part of the Delta Plan contract; Task Order signed June 7; draft plan due June 24.*

16. Council requested that a staff representative attend the BDCP meetings and provide a periodic update. Alternating between a staff update and BDCP direct update.

DSC Response: *This has been completed. Updates will be presented to the Council on an altering schedule between Council staff and a BDCP representative.*

17. Council requested staff to appoint a member to sit on the committee and participate in discussions relating to CEQA/EIR/EIS.

DSC Response: *BDCP has not responded to Council's request for a method of participation in Steering Committee discussions; staff has been attending SC meetings and will report back at DSC meetings. Staff also is now participating in staff-to-staff discussions related to CEQA/EIR/EIS.*

18. Council suggested sending an invitation to the representative from the Jones Tract Reclamation District to present a discussion regarding the levee breach.

DSC Response: *We are forming a panel to discuss levees and flood protection for the July 2010 Council meeting, and will contact the Jones Tract Reclamation District for a participant.*

19. Send Mark Cowin a list of discussion points for the presentation on flood management.

DSC Response: *This has been completed.*



Australia's Drought – Lessons for California

By Wendy Martin

In November 2009, I had the once in a lifetime opportunity to join an international delegation of water leaders on a Water Study Tour hosted by the Australian Trade Commission. Eleven delegates representing California, Texas, Colorado, Georgia, Washington, D.C. and Mexico traveled to Australia to learn about Australia's extreme drought and the actions Australians have taken to survive in a drying climate.

Delegates traveled to five of Australia's six states and the nation's capital to learn about drought and the actions being taken in response. We had the opportunity to meet high level water policy makers around the country and understand the challenges and politics associated with water reform in Australia.

The following is a synthesis of the travel journal I kept documenting the major policy issues presented to the delegation and some of the unique and wonderful things about Australia.

Background

After becoming DWR's Statewide Drought Coordinator in August 2008, I set out to learn about worldwide drought issues and establish contact with other countries and regions of the world experiencing drought. Because of the similarities to California in climate and geography, what I was learning from Australia seemed particularly relevant for California.

Australia, which is struggling with extreme drought, is considered to be the driest continent on earth and the central portion of the country is virtually uninhabited. Eastern Australia has struggled under more than a decade of severely dry conditions and Western Australia has seen conditions become increasingly dry over the last 30 years.

Victoria's Long Drought

After the 14-hour flight from Los Angeles to Brisbane, Australia, we flew to Melbourne (pronounced Mel-bun) where

The city of Melbourne Australia with the Yarra River in the foreground.

our tour began early Monday morning. Our trip's itinerary was intense with each day filled with early morning starts, non-stop meetings, working lunches, and evening networking receptions.

It was incredibly hot in Australia when we were there. They experienced their warmest November on record with most of the days 100 degrees or higher.

Melbourne is a big city of about 3.6 million people. The Yarra River runs through downtown and reminded me a lot of the Sacramento River. We met with the Office of Water, Department of Sustainability and the Environment for the state of Victoria. Victoria is in its 13th year of drought. Victoria's drought response includes: desalination, water trading, expansion of pipelines to connect water systems, recycling, conservation and upgrading Victoria's agricultural irrigation system. Stormwater, which is a discarded waste product in California, is a valuable commodity in Australia where it can be captured and used or sold.

Conservation of water is part of Australian's everyday life. Australians have become highly efficient in how they use water. Victoria has reduced the amount of water used by each person each day by 30 percent and is currently targeting 155 liters per person per day (that's about 41 gallons per person per day as compared to California's statewide average of 180-200 gallons per person per day). Industrial water use has dropped by 34 percent. To achieve these results, they have used education (including classroom education for school children), rebates, incentives and water use restrictions. Every home we saw was plumbed for recycled water and there were no single flush toilets (a dual flush toilet allows the user to control the volume of "flush," either a half flush or full flush depending on the use).

Victoria's Agricultural Region

Shepparton is a small farming community in rural Victoria. Traveling through the Victorian countryside looked just like driving through the Central Valley of California. Victoria's Food Bowl region which we visited is similar to our San Joaquin Valley. Australia can and essentially does grow anything that California can because of the similarity in climates. Australia used to be a major global producer of rice, but because of the drought and continuing water shortages they are pretty much

out of the rice business. We had an opportunity to meet the local farmers and tour the large irrigation improvement project in rural Victoria where open irrigation channels are being lined and delivery systems are being replaced with state of the art technology. One farmer relayed the story of his son's farm where the irrigation improvement project resulted in a decrease in water use of 45 percent and an increase in yield. Now that's impressive.

South Australia

During our visit to Adelaide, we had the opportunity to meet with many talented high-level water officials. Of particular note was Minister Karlene Maywald who is both an elected official and a government appointee and John Ringham, the Chief Operating Officer of SA Water (South Australia Water).

While we were in South Australia, the water officials were being battered in the press because of their lack of flexibility in imposing water restrictions. People's lawns and flower gardens were dying from the extreme heat, but unless you were connected to a recycled water source or had a rainwater tank you were not allowed to water outside.

One of the most troubling issues we learned about in South Australia was the looming ecological disaster at the Lower Lakes on the Murray River. The Murray River used to flow out to the sea. Over-allocation and extreme drought have cut the river off from the ocean. At its lower end, it flows into a series of shallow lakes which are now drying. As they dry, the soils become exposed; and winds create dust resulting in air quality problems similar to those at the Salton Sea in Southern California. The Lower Lake soils also turn acidic when exposed to air, and then when it does rain, the acid is washed back into the

remaining water making it toxic for fish and wildlife and unusable for humans. In some places, the water pH was as low as one or two. The South Australian government was trying to move forward with emergency actions to keep the soils wet, but there remain grave concerns about the health of the lakes and the ecosystems and human uses supported by them.

On a more positive note, we also had the opportunity to visit the water conservation community of Mawson Lakes where storm water is captured, filtered through wetlands and then injected into groundwater aquifers. All of the homes, landscaping and parks, businesses and schools in the community were



Wendy Martin in the reverse osmosis room at the Perth Desalination Plant.

plumbed for recycled water. It really was an eye opener of what some of the possibilities for conservation and recycling in California could be.

Western Australia

Of all the places we travelled to, Western Australia was my favorite. Bright red lorikeets greeted us from the trees at the airport. It reminded me of San Diego 20 years ago. Perth is nestled along the Swan River, which is so wide it looks like a bay. It was the classic Australian mixture of old and new, high-rise buildings right next door to old Catholic churches.

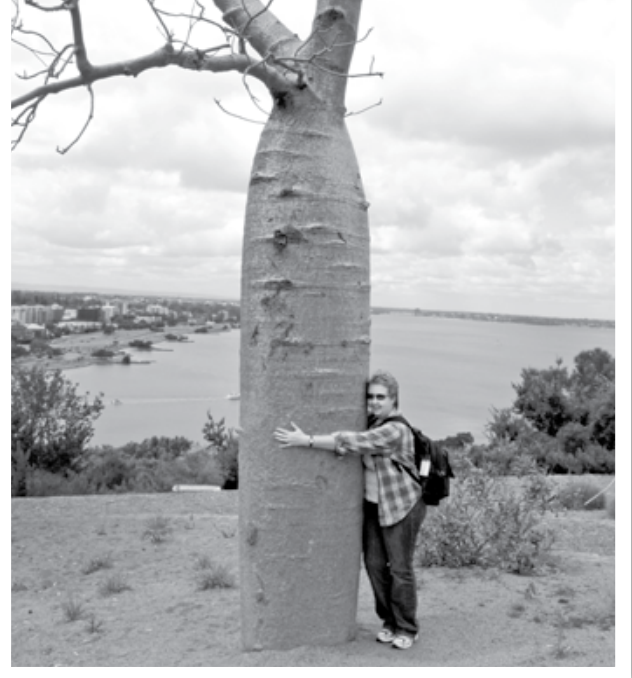
Perth is a real example of climate change in action. Its drought has been continuous and worsening for the last 30 years. In addition to meeting with the top water officials at the Water Corporation in Western Australia, we visited the Center for Water Research at the University of Western Australia and the newly established National Center for Excellence in Desalination, affiliated with Murdoch University.

I have to say, the Australians seem to have figured out how to effectively do ocean desalination. Desalinated ocean water is, or will be, part of the water supply for every major urban area in Australia. Desalination can be done in ways that are environmentally friendly and use much less energy. The Australians have addressed all of the major concerns that arise in California about desalination: larval entrainment from the intakes, brine disposal and high energy use. Intakes for the new desalination plants are ultra-low velocity or consist of perforated pipe below the sea floor. Brine disposal makes use of new technology to separate and remove minerals and salt that can then be used as commercial products. Energy recovery units (developed and manufactured here in California, by the way) reduce energy use and Australia's commitment to using renewable energy for desalination makes energy consumption much more manageable. One of the high points of the trip was actually getting to tour Australia's first desalination plant outside of Perth on the coast of the Indian Ocean.

At Kings Park in Perth, we learned about horticultural research that is producing ornamentals for extremely dry places that receive only 1-2 inches of rain each year. We also toured the Swan River wine growing region that is producing some of the great Australian wines that we are now finding in the U.S.

The Nation's Capital

Certainly two of the most interesting days on our trip were spent in the nation's capital learning about Australia's national water reform and national water policy. In Canberra (pronounced Cam-bra), we met with top officials at the National Farmers Federation, the National Water Commission and the



Wendy Martin hugs a 300 year old native Boab tree in Kings Park in Perth Western Australia.

Murray Darling Basin Authority. We also had the opportunity to meet with the Commonwealth Scientific Industrial Research Organization – CSIRO (pronounced CSI – R-O) which is the branch of the federal government doing scientific research, much of which is on water. We also had the good fortune to have a behind-the-scenes, after-hours tour of Parliament House (which is equivalent to our nation's Capitol) where both houses were in session. We also were hosted for dinner at Parliament House by the Parliamentary Secretary for Trade which was a great honor, along the lines of being invited to dinner at the Capitol in Washington, D.C.

Summary of Tour

By the end of my trip, I better understood the policy and politics behind some of the water reform actions that had been taken in Australia. I had the good fortune to meet individually with top managers and policy makers, attend a Victoria Parliamentary Oversight Hearing on water, tour recycled water treatment facilities and see new housing developments being plumbed for recycled water.

At every turn on the trip, there was an example of what was possible for California. In California, we are at the crossroads of having to change how we think about and use our water resources. In Australia, they have been where we are now, made the tough choices necessary and have come out the other side successfully. Every water leader I questioned confirmed that it was not until a true crisis emerged – where Australians were certain to run out of water if changes were not made, that change was possible. The most exciting thing for me was that the Australians embraced the challenges before them and figured out ways not only to survive, but thrive in their drying climate as they move into the future. ■

Reallocation of Delta Council Funds for the Delta Plan Contract and Delta Protection Commission Funding Assistance Request

Requested Action: Direct the Executive Officer to execute Interagency Agreements with the Department of Water Resources and the Delta Protection Commission to augment funding for Council assistance for BDCP related work (\$300,000), the Delta Plan (\$500,000), and the DPC Economic Sustainability Plan (\$500,000).

Background

Preparation of the Delta Plan is a major planning effort that may incorporate other significant, ongoing efforts such as the Bay Delta Conservation Plan (BDCP) and also those efforts of the Delta Protection Commission (DPC) which include the preparation of the Economic Sustainability Plan.

The legislation contained specific requirements for the BDCP process as it relates to the Delta Plan, and specified that the Council have a consultant role with the lead agency. Some funding to support the Delta Plan development and independent review of BDCP has been approved. In April the Council executed an agreement with a consulting firm to assist in the preparation of the Delta Plan. That contract provides that the Council will engage the services of a subcontractor to perform an independent unbiased review of BDCP and related work products.

In order to meet the requirements set forth by legislation, the Council staff is recommending the approval of three interagency agreements to assist in the completion of the Delta Plan.

Those agreements include services for:

- Independent contractor to assist with BDCP review;
- Continuation of work (bridge funding) for the current Delta Plan contract; and
- Preparation of the Economic Sustainability Plan

Details below describe the purpose, term and description of each of the requested contracts.

Utilizing the current Delta Plan contract Council staff is recommending the transfer of funds to acquire the services of a subcontractor for the independent BDCP review and also the transfer of bridge funding for the Delta Plan to continue work through the end of September in the absence of a FY 10/11 budget. The work under these contracts will be funded using 09/10 general fund allocations from the Council.

Contracts with DWR:

1. Transfer of funds from Council to DWR in the amount of \$300,000 to obtain the services of an Independent subcontractor for BDCP review. The anticipated term of this agreement will be from June 24, 2010 to June 30, 2010. (The contract will not be effective until signed by all parties and approved by the Department of General Services).
2. Transfer of funds from Council to DWR in the amount of \$500,000 to use as bridge funding for the current Delta Plan contract. The anticipated term of this agreement will be from June 24, 2010 to June 30, 2010. (The contract will not be effective until signed by all parties and approved by the Department of General Services).

At the May meeting, the Delta Stewardship Council received a written request from Delta Protection Commission Chair Don Nottoli to transfer funding for the preparation of the Economic Sustainability Plan, which is due to the Legislature on or before July 1, 2011.

The intent of this interagency agreement is to work together to accomplish the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The study will be an integral part in the preparation of the Delta Plan.

Contracts with DPC:

1. Transfer of funds from Council to the Delta Protection Commission in the amount of \$500,000 for the preparation of the Economic Sustainability Plan. The anticipated term of this agreement will be from June 24, 2010 to June 30, 2010. (The contract will not be effective until signed by all parties and approved by the Department of General Services).

Fiscal Information

Work under this contract will be funded using FY 09/10 general fund expenditures.

List of Attachments

Attachment 1 - Correspondence from Delta Protection Commission

Contact

Angela D'Ambrosio
Special Assistant to the Executive Officer

Phone: (916) 445-5797

DELTA PROTECTION COMMISSION

14215 RIVER ROAD

P.O. BOX 530

WALNUT GROVE, CA 95690

Phone (916) 776-2290 / FAX (916) 776-2293

Home Page: www.delta.ca.gov*Contra Costa County Board of Supervisors*

May 24, 2010

Sacramento County Board of Supervisors

Phil Isenberg, Chair
Delta Stewardship Council
650 Capitol Mall, Fifth Floor
Sacramento, California 95814

*San Joaquin County Board of Supervisors**Solano County Board of Supervisors*

Dear Chair Isenberg:

Yolo County Board of Supervisors

SUBJECT: Request for Transfer of \$500,000 to the Delta Protection Commission
for Preparation of an Economic Sustainability Plan for the Delta

Cities of San Joaquin County

As you are aware, the Legislature has recognized the Delta Protection Commission (Commission) as playing a key role in the efforts to address the challenges facing the Sacramento-San Joaquin Delta. Among the many tasks assigned to the Commission under Senate Bill SBX7 1 is the mandate to prepare an Economic Sustainability Plan for the Delta (Plan) no later than July 1, 2011.

*Cities of Contra Costa and Solano Counties**Cities of Sacramento and Yolo Counties*

While funding for this task has not yet been secured, the Commission has moved forward to initiate a process to assure completion of the Plan within the established timeframe of the legislation and to coincide with the timelines of other Delta initiatives underway, including preparation of the Delta Plan.

*Central Delta Reclamation Districts**North Delta Reclamation Districts*

Progress to date includes: establishment of an Economic Sustainability Plan Committee comprised of seven members of the Commission; scheduling of monthly Commission meetings to consider recommendations of the Committee; development of a concept and framework, including timeframes, for completion of the study that has taken into consideration public input from two public meetings held thus far; preparation of a Request for Qualifications for consultant expertise to guide the process; and anticipated preparation of a Request for Proposals for completion of the Plan in a timely manner.

*South Delta Reclamation Districts**Business, Transportation and Housing**Department of Food and Agriculture**Natural Resources Agency*

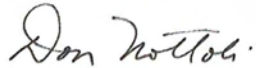
While these accomplishments are significant and crucial to successful completion of the Plan as intended under the legislation, funding support to continue progress without delay is critical. The funding commitment of \$500,000 through transfer of funds from the Delta Stewardship Council to the Commission that you have indicated to members of the Commission and during recent legislative hearings truly exhibits your recognition of the importance of collaboration to successfully fulfill the expectations of the Legislature and the Administration.

State Lands Commission

Phil Isenberg
May 24, 2010
Page Two

On behalf of the Commission I want to express our sincere appreciation of your efforts to work together for the good of the Delta.

Sincerely,



Don Nottoli
Chair, Delta Protection Commission
Member, Delta Stewardship Council

cc: Members, Delta Stewardship Council

Joe Grindstaff, Interim Executive Officer, Delta Stewardship Council
Honorable Darrell Steinberg, Senate President pro Tem
Honorable Joe Simitian, Member of the Senate
Honorable Lois Wolk, Member of the Senate
Honorable John Perez, Speaker of the Assembly
Honorable Joan Buchanan, Member of the Assembly
Honorable Alyson Huber, Member of the Assembly
Honorable Jared Huffman, Member of the Assembly
Honorable Ira Ruskin, Member of the Assembly
Honorable Mariko Yamada, Member of the Assembly
Members, Delta Protection Commission, Econ. Sustainability Plan Committee
Linda Fiack, Executive Director, Delta Protection Commission

**DELTA STEWARDSHIP COUNCIL
May 27-28, 2010
MEETING SUMMARY**

DAY 1: Thursday, May 27, 2010, (10:00 a.m. – 4:00 p.m.)

1. Welcome and Introductions

The meeting was called to order at 10:00 a.m., May 27, 2010, by Chair Phillip Isenberg.

2. Roll Call – Establish a Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present for the meeting: Don Nottoli, Phillip Isenberg, Gloria Gray, Randy Fiorini, Richard Roos-Collins, Hank Nordhoff, and Patrick Johnston.

3. Chair's Report

The meeting began with an overview of the two-day meeting given by Chair Isenberg.

4. Interim Executive Officer's Report

Joe Grindstaff began the Interim Executive Officer's Report by requesting the Council schedule the November and December meeting. Grindstaff explained members were polled by staff and most are available on November 18 -19, and December 16-17, 2010. The Council approved the recommended meeting dates, recognizing not all members are available. Chair Isenberg reminded members that teleconferencing may be an option used for members who have conflicts. He asked that staff contact the members who are not available to meet "in-person" on those dates and determine if teleconferencing is feasible. The Chair and Council Stevens noted that a motion and vote was not needed as long as the meeting is properly noticed. **November 18-19 and December 16-17, 2010, added to the schedule approved at the April 22-23, 2010 meeting.**

4a Legislative and Legal Update

Chris Stevens presented the Legal Update. Stevens brought the Council's attention to the follow-up information on water rights that were included in Agenda Item 4a. Stevens introduced David Sandino, Chief Council for the Department of Water Resources, who presented a PowerPoint presentation on Delta litigation.

Grindstaff updated the Council on the AB 2092 (Huffman) bill and noted "Other Bills of Interest" that Curt Miller will track for the Council.

4b.Follow-up on Information Requests from the Council

Grindstaff referenced the responses to the requests from the Council that were included in the members' binders. Chair Isenberg requests a web reference (easily accessible link) be set up where the follow-up questions and responses can be posted.

5. Consent Calendar

*(Items for consent calendar are expected to be routine and non-controversial. The **Council will be asked to approve items 5a through 5c at one time without discussion. If any Council member, staff, or interested person requests that an item be removed from the consent calendar, it will be taken up in the regular agenda order.**)*

All items on the consent calendar were approved. There are modifications to the format of the meeting summaries as requested by the Council. (Agenda Items 5a and 5b).

5a. April 1, 2010, Meeting Summary

It was moved (Nottoli) and seconded (Fiorini) to approve the April 1, 2010 Meeting Summary with a **modification to include a summary or topic of the comments by each public commenter listed.** A vote was taken (7/0) the motion was unanimously passed as modified.

5b. April 22-23, 2010, Meeting Summary

It was moved (Nottoli) and seconded (Fiorini) to approve the April 1, 2010 Meeting Summary with a **modification to include a summary or topic of the comment by each public commenter listed.** A vote was taken (7/0) the motion was unanimously passed as modified.

5c. Legislative Policy Review (Water Code §85210)

The policy recommended by staff for reviewing and tracking future legislation for the Council was approved.

6. Request from the Delta Protection Commission (**Action Item**) (Water Code §86210)

Joe Grindstaff presented a request to the Council from the Delta Protection Commission, dated May 7, 2010, to transfer funding for preparation of Primary Zone Study required by SBX71. The request is for \$104,250.00. The staff is recommending the Council enter into an interagency agreement with the DPC in the amount of \$86,750.00.

The letter/request for funding is from Member Nottoli, as the Chair of the DPC. Nottoli stated for the record he has no personal financial interest or any conflict with this request.

It was moved (Gray) and Seconded (Roos-Collins) **to approve the transfer of funding to the DPC.** A vote was taken (7/0) the motion was unanimously passed.

A second request from the Delta Protection Commission, dated May 24, 2010, requesting a transfer of \$500,000.00 to the DPC for preparation of an Economic Sustainability Plan for the Delta was also received by the Council. This request is also from Member Nottoli, as the Chair of the DPC. The item was discussed but the Council will defer consideration of this item to the June 24-25, 2010 meeting in order to review the request.

Public Comment was heard from the following:

- Burt Wilson, Carmichael, CA

7a. Interim Lead Scientist's Report

Cliff Dahm introduced Lauren Hastings, the Deputy Executive Officer for Science, who presented the Interim Lead Scientist's Report. Hastings updated the Council on recent and upcoming Delta Science Program activities.

7b. Staff Recommendations on Appointments to the Delta Independent Science Board (per Council direction of April 1, 2010) (Action Item) (Water Code §85080)

Cliff Dahm summarized the process used for recruitment and to determine the ten individuals selected for the Delta Independent Science Board. Dahm went over all the candidates and their areas of expertise. Staff is working on the charge and operating guidelines that will be presented at the June meeting.

The Council will reconsider this item at its next meeting, allowing 10 days to review the listing of candidates.

Public Comment on agenda item 7b was heard from:

- Paul Sosnowski Bradford Island

8. Approval of Department of Water Resources Proposition 1E Expenditures for Selected Projects (Action Item) (Water Code §83002 (a)(1))

Dave Mraz, Department of Water Resources presented this **action item** which included a PowerPoint Presentation on Proposition 1E Expenditures and Recommended Aqueduct Projects. The Council also discussed prioritizing Delta levee projects, Delta levee standards that are required to apply for federal disaster assistance, costs of protecting state assets, and other funding issues.

A list of "Special Projects Levee Repair and Improvement PSP, Staff Recommended Aqueduct Protection Projects" was received by the Council but not received in time for the members to review it and they were reluctant to act without having time for them or the public to review and understand the request. DWR Director Mark Cowin said he would accommodate the Council's need for additional information and adequate time for decision-making and the Council deferred consideration of this item to the June 24-25, 2010 meeting.

Public Comment on agenda item 8 was heard from the following:

- Eileen White, Manager of Water Systems, EBMUD
- Karen Medders, Delta Property Owner
- Sprec Rosekrans, EBMUD Customer, and EDF

9. Remarks from Annemieke Nijhoff, Director-General, Directorate-General of Water Affairs at the Ministry of Transport, Public Works and Water Management, Netherlands

The Director-General presented an informational PowerPoint presentation on Flood Safety and Adaptation in the Netherlands.

10. Interim Plan and Delta Plan (Discussion/Action Item) (Water Code §85084 and Water Code §85300)

Terry Macaulay presented this item. Macaulay walked the Council through a PowerPoint presentation on the Delta Plan and Interim Plan. The presentation highlighted the Council's direction from the April 22-23, 2010 meeting, including statutory requirements, requested actions, and the proposed schedule for the Delta Plan/Interim Plan. Gwen Buchholz, the Delta Plan Project Director, covered Draft Outlines and Recommended Content for the Delta Plan/Interim Plan part of the presentation.

Staff is requesting the Council approve or modify staff recommendations for processes related to the development of the Interim Plan and Delta Plan: (a) Overall work schedule and four key milestones for the Interim Plan and the Delta Plan. (b) Draft Delta Plan outline. (c) Draft Interim Plan outline. (d) Elements of a transparent and public engagement plan.

(a) Overall work schedule and four key milestones for the Interim Plan and the Delta Plan

The Council discussed the proposed milestones and target dates in the proposed schedule and **approved the action** (schedule) but recommended the title be modified as follows: **Delta Plan/Interim Plan Proposed Schedule**. It was moved (Nordhoff) and seconded (Roos-Collins) to approve the schedule as modified. A vote was taken (7/0) the motion was unanimously passed.

(b) Draft Delta Plan outline and (c) Draft Interim Plan outline

The Council discussed recommendations regarding the structure and content of the Delta Plan (Slide #10) and the 8 policy objectives. The Chair stated that it is necessary to use the precise statutory language in the outline/plan. The staff noted the Chair's direction regarding the use of precise statutory language and it was moved (Nordhoff) and seconded (Roos-Collins) to **approve the action**. A vote was taken (7/0) the motion was unanimously passed.

The Council also granted staff **"general editing authority"** when developing the Delta Plan Interim Plan. It was determined that no vote was needed for this action.

(d) Elements of a transparent and public engagement plan

The staff proposed a public engagement plan that includes posting online all materials and comments submitted to the Council; maintaining an online library for clearinghouse of reference materials related to the work of the Council; and to develop plans to allow for maximum public input by creating three workgroups. The Topic-specific workgroups would be charged with **(1) Prioritization criteria for early of actions and priority to the structure** (2) Outreach (3) DPC Plan Review. After discussion about the membership, charge and deliverable, size of groups, meeting being public, the Council moved to approve this action item with the requested change noted in number one above. It was moved (Roos-Collins) and

seconded (Nordhoff) to approve the action. A vote was taken (7/0) the motion was unanimously passed.

The Council discussed the process for selecting an independent subcontractor for BDCP-related work (slide 21) and how the process would be structured. The Council requests a committee of two members, along with staff, review the applications and then write the qualifications, define the work; process for advertising. The Committee will make the recommendation and choose the qualified candidate. No vote was taken as this was a procedural item (the action had been approved at the April 22-23, meeting.)

Staff requested the Council direct them to invite entities of covered actions to engage in early consultations and establish processes for Council engagement and review of actions. The Council directed staff to develop a consultation process to review the covered actions, and present the process to the Council. No vote taken.

Public Comment on agenda item 10 was heard from the following:

- Ryan Bezerra, Bartkiewicz, Kronick & Shanahan
- Tom Zuckerman, Central Delta Water Agency
- David Pegos, Department of Food and Agriculture and member of the Delta Protection Commission
- Tim Quinn, Association of California Water Agencies
- Spreck Rosekrans, Environmental Defense Fund
- Mark Rentz, Association of California Water Agencies

11. Public Comment

- Steve Evans, Friends of the River, regarding Environmental Water Caucus Report
- David Mauier, Planning and Conservation League, regarding Delta Conveyance Size, Cost and Export Expansion
- Jason Larrabee, Tehama-Colusa Canal Authority, offering assistant to the Council
- Spreck Rosekrans, Environmental Defense Fund, consideration of evaluating a smaller conveyance facility for cost effectiveness.

DAY 2: Friday, May 28, 2010 (9:00 a.m. – 4:00 p.m.)

12. Call to Order

The meeting resumed at 9:00 a.m. with Chair Isenberg presiding. Chair Isenberg noted that the Council left off yesterday agreeing to continue the discussion on agenda item 8 however, Director Cowin requested the item be pulled from the agenda and addressed at the June meeting.

13. Roll Call – Establish Quorum (Water Code §85210.5)

Roll call was taken and a quorum was established. The following members were present for the meeting: Phillip Isenberg, Randy Fiorini, Richard Roos-Collins,

Gloria Gray, Hank Nordhoff. Don Nottoli arrived at 9:15 a.m. and Patrick Johnston arrived at 11:00.

14. Progress Report Regarding Bay Delta Conservation Plan and Discussion of the Council's Roles and Responsibilities (Water Code §85320)

Keith Coolidge presented the BDCP agenda item that included panel discussions and presentations from state and federal agency representatives, steering committee members, and stakeholders. Participating in the discussion were:

Overview Panel

Karen Scarborough, Undersecretary, Natural Resources Agency; Mark Cowin, Director, DWR; Karla Nemeth, BDCP liaison, Natural Resources Agency; Chuck Gardner, consultant to DWR; Jerry Johns, DWR; Ron Milligan, Bureau of Reclamation

Steering Committee Panel

Jason Peltier, Westlands Water District; Gary Bobker, The Bay Institute; Greg Gartrell, Contra Costa Water District; Chris Scheuring, California Farm Bureau Federation

Lead Agencies Panel

Federico Barajas, Bureau of Reclamation; Jerry Johns, DWR; Dan Castleberry, US Fish & Wildlife Service; Carl Wilcox, DFG; Howard Brown, National Marine Fisheries Service

Delta Stakeholders Panel

Gilbert Cosio, MBK Engineers / Reclamation Districts; Mark Pruner, North Delta CARES; Dick Pool, Water 4 Fish

Public Comment on agenda item 14 was heard from the following:

- Barry Nelson, Natural Resources Defense Council
- Mark Rentz, Association of California Water Agencies

15. Public Comment was heard from:

- Nicole Suard, Snug Harbor, regarding letter and attachment submitted to Council detailing Incorrect information in DRMS report, Delta maps in particular

16. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date.

The next meeting is scheduled on June 24-25, 2010. Chair Isenberg adjourned the meeting.

Interim Lead Scientist's Report

Summary: This report describes the Delta Science Program's involvement with the Bay-Delta Conservation Plan (BDCP) and participation in the joint meeting of The American Society of Limnology and Oceanography (ASLO) and the North American Benthological Society (NABS).

BDCP Involvement

The Delta Science Program has been asked to provide advice and organize independent peer review panels for several components of the BDCP including the following:

- **BDCP Adaptive Management Advisors' Report** – Interim Lead Scientist, Cliff Dahm, was one of nine scientists invited to provide advice and recommendations to BDCP on how best to incorporate adaptive management into the plan. The February 2009 Independent Science Advisors' Report on Adaptive Management can be accessed at:
http://baydeltaconservationplan.com/NewsLtrBackgroundDoc/BDCP_Adaptive_Management_ISA_report_Final.pdf
- **BDCP Logic Chain Review**– In March 2010, the Delta Science Program convened a panel to review and analyze the proposed “logic chain” approach, a framework for linking covered species recovery goals with BDCP goals, objectives, conservation measures, monitoring, and adaptive management. The review panel consisted of four of the BDCP adaptive management science advisors, including Cliff Dahm. The review panel's report can be accessed at:
<http://baydeltaconservationplan.com/SteeringCommitteeLibrary/3.25.10%20BDCP%20SC%20HO%20Logic%20Chain%20Report.pdf>
- **Future reviews** – The US Department of Interior and Department of Commerce have requested the Delta Science Program or Delta Independent Science Board to conduct additional independent science reviews of the following BDCP products:
 - **Follow-up Logic Chain Review** — The Delta Science Program has been asked to provide an independent panel to review the logic chains developed for the eleven covered fish species. Schedule: panel meeting August 2010, report September 2010.
 - **Effects Analysis Review** – The purpose of the BDCP effects analysis is to evaluate the potential beneficial and adverse effects of the BDCP on biological resources for use in preparation of the BDCP Habitat

Conservation Plan/Natural Community Conservation Plan, BDCP/re-initiated Central Valley Project/State Water Project Operations Biological Assessment (BA), BDCP US Fish and Wildlife Service and National Marine Fisheries Service Biological Opinion (BO), and BDCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) biological resources section. The effects analysis will determine the collective effects of individual actions and overall ecological outcomes of the BDCP in achieving conservation of covered species. The Delta Science Program has been asked to provide an independent panel to review the adequacy of the effects analysis and of the analytical tools and methods used to develop the analysis. Schedule: panel meeting August 2010, report September 2010.

- **BDCP Draft EIR/EIS, Draft Biological Assessment, and Draft Biological Opinion Reviews** – The federal agencies have asked the Delta Independent Science Board to review the scientific adequacy of analyses in these draft environmental compliance documents. SB1 also requires the Delta Independent Science Board to review the draft BDCP EIR. Proposed schedule for review panel reports: draft EIR/EIS May 2011, draft BA July 2011, draft BO February 2011.

ASLO / NABS Joint Meeting – Interim Lead Scientist, Cliff Dahm, and IEP Lead Scientist, Anke Mueller-Solger attended and presented at the joint meeting of The American Society of Limnology and Oceanography (ASLO) and the North American Benthological Society (NABS) on June 6-11, 2010 in Santa Fe, New Mexico. The topic of the conference was “Aquatic Sciences: Global Changes from the Center to the Edge.” Cliff Dahm gave a plenary lecture on arid land rivers, an invited lecture on interactions between aquatic sciences and management, participated in a discussion on alternative careers for aquatic scientists and co-organized a special session, “When Rivers Run Dry: Temporary Streams as Coupled Aquatic-Terrestrial Ecosystems.” Anke Mueller-Solger gave a presentation titled, “Castle Lake Lessons for Doing Science in the California Delta.” The joint conference was an opportunity for the lead scientists to build their knowledge base and network with national and international scientists in the areas of interdisciplinary aquatic sciences including oceanography, limnology, and river studies. Such meetings are excellent venues for building up the expertise base of the Delta Science Program and Interagency Ecological Program by identifying active top-rated scientists for current and future reviews.

Contact

Dr. Cliff Dahm
Interim Lead Scientist

Phone: (916) 445-0463

Staff Recommendations on Appointments to the Delta Independent Science Board (per Council direction of April 1, 2010)

Requested Action: The Delta Stewardship Council is required by the Sacramento-San Joaquin Delta Reform Act of 2009 to appoint a Delta Independent Science Board (ISB) of no more than ten members as one of their early actions. Per direction from the Council at their April 1, 2010 meeting, the Interim Delta Lead Scientist issued a call for applications for appointment to the Delta ISB. The Interim Delta Lead Scientist, the previous CALFED Independent Science Board chair and the Delta Stewardship Council chair reviewed the applications and present a list of 10 Delta Independent Science Board nominees for consideration by the Council.

Water Code Section 85230 (1) specifies:

"Members of the Delta Independent Science Board shall be nationally or internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta. The members shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board."

Recommendation

Staff recommends that the Council approve the following resolution: "The Delta Stewardship Council appoints to the Delta Independent Science Board the 10 applicants identified in this report: Brian Atwater, US Geological Survey; Elizabeth Canuel, College of William and Mary; Tracy Collier, National Oceanic and Atmospheric Administration; Mike Healey, University of British Columbia, emeritus; Edward Houde, University of Maryland; Judy Meyer, University of Georgia, emeritus; Jeff Mount, UC Davis; Richard Norgaard, UC Berkeley; Vincent Resh, UC Berkeley; and John Wiens, Point Reyes Bird Observatory Conservation Science.

Background

The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Delta Stewardship Council to appoint a Delta Independent Science Board (Delta ISB) as one of their early actions. The Act states that the Delta ISB shall consist of no more than 10 members who will serve five-year terms and may serve no more than two terms. In addition, the Act requires that members of the Delta ISB shall be nationally or internationally

prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta and shall not be directly affiliated with a program or agency subject to the review activities of the Delta Independent Science Board. The Delta ISB will provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs. These reviews shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

Per direction from the Council at their April 1, 2010 meeting, the Interim Delta Lead Scientist issued a call for applications for appointment to the Delta ISB. A total of 63 applications were received by the deadline of April 30, 2010. The Interim Delta Lead Scientist, previous CALFED Independent Science Board chair and the Delta Stewardship Council chair reviewed the applications and developed a list of 10 Delta Independent Science Board nominees for consideration of the Council. The suite of Delta ISB members recommended by Dahm, Mount and Isenberg meet the legislatively mandated qualifications. They include world class scientists who span the range of expertise including ecology, geomorphology, hydrology, biogeochemistry, fish biology, and environmental economics necessary to perform the required review functions.

Careful staff review of the curriculum vitae and submissions included examination of the potential conflict issue identified in Section 85280(a)(2). Staff is satisfied that no such conflict appears for the recommended candidates.

Affiliation and areas of expertise for the 10 individuals recommended for appointment to the Delta ISB are shown in Attachment 1. Detailed curriculum vitae are available here: http://www.deltacouncil.ca.gov/delta_science_program/isb/isb_members.html

Fiscal Information

Funding for the Delta ISB is part of the current Delta Science Program budget. Delta ISB members are compensated for their time and travel as is standard when participating on a standing board or technical panel.

List of Attachments

Attachment 1 – Affiliation and Areas of Expertise for the 10 Individuals Recommended for Appointment to the Delta ISB

Contact

Dr. Clifford Dahm
Interim Lead Scientist

Phone: (916) 445-0463

PROPOSED DELTA INDEPENDENT SCIENCE BOARD MEMBERS

Name	Affiliation	Areas of Expertise
Brian Atwater	Geologist, U.S. Geological Survey (since 1974) Affiliate Faculty, University of Washington, Seattle, WA (since 1986)	Dr. Atwater is best known for using coastal geology to help identify and define earthquake and tsunami hazards in the Cascadia region of British Columbia, Washington, Oregon, and California. This work has included comparative studies in Alaska, Chile, and Japan. He is a member of the National Academy of Science.
Elizabeth Canuel	Professor, Department of Physical Sciences, School of Marine Science, The College of William & Mary, Gloucester Point, VA.	Dr. Canuel's major research interests include the biogeochemistry and cycling of organic carbon in aquatic and sedimentary systems, with emphasis on applications of lipid biomarkers, stable isotopes, studies of sediment diagenesis, and influence of humans on the carbon cycle in coastal ecosystems.
Tracy Collier	Science Advisor, NOAA Oceans and Human Health Program, Silver Spring, MD (recently retired)	Dr. Collier has broad experience in fish biology, ecology, environmental toxicology, and the generation of scientific information to support management decisions. In particular, he was recognized for his service in the Hurricane Katrina Emergency Response in New Orleans.
Mike Healey	Professor Emeritus, Institute for Resources, Environment and Sustainability, University of British Columbia, Vancouver, BC	Throughout his career, Dr. Healey has taken a strong interest in how scientific information is used in developing resource management policy. He is recognized internationally as an expert on the ecology of Pacific salmon and as an expert in the design of resource management systems. Dr Healey served as the CALFED Lead Scientist and advisor to the Delta Vision Blue Ribbon Task Force.
Edward Houde	Professor, University of Maryland, Center for Environmental Science, Solomons, MD	Dr. Houde's research interests include fisheries science and management, larval fish ecology, and fisheries oceanography. He has served as Chair of the National Academy of Science's Committee on Marine Protected Areas and co-chaired the Technical Advisory Panel that developed a Fisheries Ecosystem Plan for Chesapeake Bay.
Judy Meyer	Professor Emeritus, Odum School of Ecology, University of Georgia, Athens, Georgia	Dr. Meyer is a nationally recognized expert on aquatic ecology and rivers. Her research interests include organic carbon, ecosystem processes in streams, urban rivers, and food webs. She currently serves on the Board of Environmental Studies and Toxicology of the National Academy of Sciences and served as Vice-Chair of the CALFED Independent Science Board.
Jeffrey Mount	Founding Director, University of California Davis, Center for Watershed Sciences	Dr. Mount's research program focuses on the geology, geomorphology and restoration of lowland river systems. He is also involved in the integration of science and policy in the management of California's rivers. He is a member of the National Academy of Sciences Committee on the Klamath River and served as Chair of the CALFED Independent Science Board.
Richard Norgaard	Professor, Energy and Resources Group; Professor, Agriculture and Resource Economics, University of California, Berkeley	A pioneer in the field of ecological economics, Dr. Norgaard's recent research addresses how environmental problems challenge scientific understanding and the policy process. He was a member of the CALFED Water Management Science Board and CALFED Independent Science Board.
Vincent Resh	Professor of Entomology, Department of Environmental Science, Policy, and Management, University of California, Berkeley	Dr. Resh's research experience includes over 300 published research studies in wetlands, streams, and large rivers on topics ranging from riverine ecology and habitat restoration to design of monitoring programs. He has served as a long-term consultant on advisory boards of international, intergovernmental agencies and has been an advisor on monitoring programs throughout Africa, Asia, and, to a lesser extent, South America.
John Wiens	Emeritus University Distinguished Professor, Colorado State University; Chief Conservation Science Officer, Point Reyes Bird Observatory	Dr. Wiens is a pioneer in the field of landscape ecology (encompassing geographic and land-use patterns in the study of ecosystems). His work in landscape ecology and the ecology of birds, has led to over 200 scientific papers and 7 books. He served as the chief/lead scientist for the Nature Conservancy from 2002-2008.

Administrative Procedures Governing Appeals

Summary: Provide comments and direction to staff with regard to draft appeals procedures, with intent to revise and bring back for formal adoption at the July meeting.

Background

The Council's enabling legislation (the Sacramento-San Joaquin Delta Reform Act of 2009) provides for a process to ensure the consistency of state and local public agency actions with the Delta Plan (see Water Code sections 85225-85225.30). In short, state and local agencies proposing to undertake a project covered by the Delta Plan must prepare and file a consistency determination with the Council, which may be appealed to the Council. The Council, in turn, must hold a hearing on the appeal and issue written findings, either denying the appeal or remanding the matter to the state or local agency for reconsideration of the proposed project based on the finding that the consistency determination is not supported by substantial evidence in the record.

The Delta Reform Act also provides a separate process in which the Council may hear appeals with regard to determinations by the Department of Fish and Game that the Bay Delta Conservation Plan has met the requirements of Water Code section 85320 (regarding compliance with the Natural Community Conservation Planning Act and the California Environmental Quality Act) for inclusion in the Delta Plan.

Water Code Section 85225.30 requires the Council to adopt administrative procedures governing appeals, which are exempt from the normal state rulemaking process.

Staff has prepared the attached draft appeals procedures for discussion purposes only at this meeting. It is the intent that Council direct staff to revise, as appropriate, and bring back to the Council in July for formal adoption.

List of Attachments

Attachment 1 – Draft Administrative Procedures Governing Appeals

Contact

Chris Stevens
Chief Counsel

Phone: (916) 445-0441

[DISCUSSION DRAFT 6/14/2010]

**DELTA STEWARDSHIP COUNCIL
ADMINISTRATIVE PROCEDURES GOVERNING APPEALS**

Introduction

1. Purpose. These administrative procedures govern how the Delta Stewardship Council considers appeals with regard to:

1) Adequacy of certifications of consistency with the Delta Plan submitted to the Council by a state or local public agency pursuant to Water Code sections 85225.10 and 85225.30; and

2) Determinations by the Department of Fish and Game that the Bay Delta Conservation Plan has met the requirements of Water Code section 85320.

NOTE: Authority cited: Water Code sections 85001, 85020(h), 85022, 85057.5, 85200, 85210, 85212, 85225, 85222.5, 85225.10, 85225.15, 85225.20, 85225.25, 85225.30, 85300, 85320(e).

Review of certifications of consistency with Delta Plan

2. Any state or local public agency proposing to undertake a covered action, as defined in Water Code section 85057.5 shall consult with the Council at the earliest possible opportunity, and in no event later than 30 days before submitting its certification to the Council pursuant to Water Code section 85225, to ensure that the project will be consistent with the Delta Plan. The Council may delegate to a member of the council, its executive officer or his designee the authority to meet with the agency or its staff to review the consistency of such proposed action.

NOTE: Authority cited: Water Code sections 85212, 85225, 85225.5, 85225.30.

3. At least 30 days prior to its submission of a certification to the Council, the state or local public agency shall post its draft certification on its website, post it conspicuously in its office, and mail it to all persons requesting notice. Members of the public shall be given an opportunity to review and comment on it prior to its submission to the Council, and their comments shall be included in the administrative record accompanying the certification.

NOTE: Authority cited: Water Code sections 85225, 85225.30.

4. Any certification of consistency filed by a state or local agency pursuant to Water Code section 85225 shall set forth detailed findings as to whether the covered action is

consistent with the Delta Plan. It shall include the administrative record on which the action was based. It shall be a public record.

NOTE: Authority cited: Water Code sections 85225, 85225.30.

5. Any person, including any member of the Council or its Executive Officer, who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, that action will have a significant adverse impact on the achievement of one or both of the goals of the Act or implementation of government sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal no later than 30 calendar days after the filing of the certification of consistency.

NOTE: Authority cited: Water Code sections 85225.10 (a), 85225.15, 85225.30.

6. The appeal shall clearly and specifically set forth the basis for the claim that the covered action is inconsistent with the Delta Plan. The appeal shall be in writing and set forth the following information:

- a) Appellant's name and address;
- b) The name and address of the party, if any, whose proposal is the subject of the appeal;
- c) A description of the covered action that is the subject of the state or local public agency certification;
- d) The identity of the state or local government body whose certification is being appealed;
- e) The specific grounds for appeal; and
- f) A detailed statement of facts on which the appeal is based.

NOTE: Authority cited: Water Code sections 85225.10 (b), 85225.30.

7. The appeal shall be considered filed with the Council when the appellant's appeal is received, determined by staff to contain all of the information listed above, and stamped "Filed" by the Council staff with the date of filing indicated.

NOTE: Authority cited: Water Code sections 85225.10, 85225.20, 85225.30.

8. Within five working days of filing of an appeal of a state or local public agency certification under these procedures, the Executive Director shall:

- a) Post a notice and brief description of the appeal in a conspicuous location in the Council's office;
- b) Mail to the affected state or local public agency and any third party whose proposal is the subject of the certification a copy of the notice and a brief description, with a copy of the appeal documents filed with the Council; and
- c) Mail copies of the appeal to each member of the Council.

NOTE: Authority cited: Water Code sections 85225.30.

9. The Council or its Executive Officer may request from the appellant additional information necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the appeal, within a reasonable period. The Council or by delegation its Executive Officer may dismiss the appeal for failure of the appellant to provide information requested within the period provided, if the information requested is in the possession of or under the control of the appellant.

NOTE: Authority cited: Water Code sections 85225.20, 85225.25, 85225.30.

10. The Council shall hear all appeals of certifications of consistency filed pursuant to Water Code section 85225 within 60 days of filing unless:

- a) The parties agree to a longer period; or
- b) The Council, or by delegation its Executive Officer, determines that the issue raised on appeal is not within the Council's jurisdiction or does not raise an appealable issue.

NOTE: Authority cited: Water Code sections 85225, 85225.20, 85225.30.

11. The Council shall make its decision on the appeal within 60 days of hearing the appeal, and shall make specific written findings either denying the appeal or remanding the matter to the state or local public agency for reconsideration of the covered action based on the finding that the certification of consistency is not supported by substantial evidence in the record before the state or local public agency that filed the certification.

NOTE: Authority cited: Water Code sections 85225.20, 85225.25, 85225.30.

12. No covered action which is the subject of an appeal shall be implemented unless one of the following conditions has been met:

- a) The Council has denied the appeal;
- b) The public agency has pursuant to Water Code section 85225.5 decided to proceed with the action as proposed or modified and has filed with the Council a

revised certification of consistency addressing each of the findings made by the Council, 30 days has elapsed and no person has appealed the revised certification;
or

c) The Council or its Executive Officer has dismissed the appeal for one or both of the following reasons:

1. The appellant has failed to provide information in her possession or under her control within the time requested; or

2. The issue raised is not within the Council's jurisdiction or fails to raise an appealable issue.

NOTE: Authority cited: Water Code sections 85225.5, 85225.25, 85225.30.

Review of Bay Delta Conservation Plan

13. If the Department of Fish and Game (Department) determines that the Bay Delta Conservation Plan (BDCP) referred to in Water Code section 85053 meets the requirements of Water Code section 85320, it shall file the BDCP and its determination with the Council.

NOTE: Authority cited: Water Code sections 85053, 85225.30, 85320.

14. Upon receipt of the Department's determination, the Executive Officer of the Council shall:

- a) a) Post a notice and brief description of the BDCP, the Department's determination, the date of filing and the right of any person to appeal that determination on its website and in a conspicuous location in the Council's office;
- b) Mail a notice and brief description of the BDCP, the Department's determination and the right of appeal to any person requesting notice; and
- c) Mail copies of the determination to each member of the Council.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

15. Any person, including any member of the Council or its Executive Officer, may appeal the determination of the Department that the BDCP meets the requirements of Water Code section 85320.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

16. Any appeal made under this chapter shall be made within 30 days of the filing with the Council of the Department's determination that the BDCP meets all the

requirements of Water Code section 85320. The appeal shall be in writing and shall clearly set forth the specific grounds for the appeal and the specific facts upon which it is based. These shall include a list of each specific requirement of Water Code section 85320 that the BDCP allegedly fails to meet.

NOTE: Authority cited: Water Code sections 85225.30, 85320.

17. Within five working days of the filing of an appeal under these procedures, the Executive Director shall:

- b) Post a notice and brief description of the appeal on its website and in a conspicuous location in the Council's office;
- c) Mail a notice and brief description of the appeal to any person requesting copies of such appeals; and
- d) Mail copies of the appeal and a brief description of the appeal to each member of the Council.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

18. The Council or its Executive Officer may request from the appellant additional information in his possession or under his control necessary to clarify, amplify, correct, or supplement the information submitted with the appeal within a reasonable period.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

19. Any appeal made under this section may be dismissed if the Council or its Executive Officer determines that it does not raise an appealable issue or if the appellant has failed to provide requested information to support her charge within a reasonable time.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

20. If the Council decides that the BDCP does not meet the requirements of section 85320, it shall remand the BDCP to the Department with detailed findings and conclusions. The Department may revise its BDCP to meet the issues raised by the Council, or may respond to the Council's findings in detail, setting forth reasons why it has concluded that its plan meets the requirements of section 85320. Unless the Council decides that the BDCP, as revised or as reaffirmed by the Department, meets those requirements, the BDCP shall not be incorporated within the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding.

NOTE: Authority cited: Water Code sections 85225.30, 85320 (a), (b), (e).

Bay-Delta Conservation Plan

Summary: At its May 29 meeting, the Council asked to receive monthly updates about the Bay-Delta Conservation Plan. The Steering Committee meets June 17 and is expected to consider a briefing about size and cost of various diversion alternatives. A report about that meeting will be included in a supplemental mailing the afternoon of June 17.

Contact

Keith Coolidge
Acting Chief Deputy Executive Officer

Phone: (916) 445-4503



DELTA STEWARDSHIP COUNCIL

MEMORANDUM

To: Council Members
From: Keith Coolidge
Date: June 21, 2010
Subject: Bay Delta Conservation Plan Update – Governance

At its May meeting, the Delta Stewardship Council requested regular updates about the activities of the Bay Delta Conservation Plan (BDCP). Much of the discussion at the last two Steering Committee meetings has focused on BDCP governance – by which they mean oversight of implementation – and the nexus that will have with the broader Delta Plan and Delta Stewardship Council.

Much of the work on BDCP governance has been done through a subcommittee led by Steering Committee members Roger Patterson (Metropolitan) and now Kim Delfino (Defenders of Wildlife), who replaced Richard Roos-Collins (American Rivers). Roos-Collins resigned upon assuming his role on the Council.

The subcommittee has identified nine components or principal elements which are detailed below along with issues yet to be resolved.

1. Management Entity – would include a program manager and staff and be responsible to the permitting agencies for implementation of the BDCP. Currently viewed as a confederation of the Department of Water Resources (DWR), Bureau of Reclamation (Reclamation) and a joint powers authority formed by the state and federal water contractors, the management entity would not itself be a legal entity but would guide implementation through the legal authorities granted to its component agencies and through contracts with other agencies.
2. Water Operations – would be managed by the DWR and Reclamation in accordance with the permitted operating criteria in the BDCP permit/authorization.
3. Supporting Entities – The Management Entity would enter into agreements with agencies that have operational authority and/or responsibilities in the Delta such as the Delta Conservancy, local Habitat Conservation Plans, and various nongovernmental organizations.
4. Regulatory Agencies – U.S. Fish & Wildlife (FWS), National marine Fisheries Service (NMFS), Department of Fish and Game (DFG), U.S. Army Corps of Engineers (USACE), State Water Resources Control Board (SWRCB) and others all have a role in

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– State Water Code §85054

Bay Delta Conservation Plan Update – Governance
June 21, 2010
Page 2

the permitting process and would coordinate with the Management Entity to ensure the permits are being fulfilled.

5. BDCP Implementation Committee – This is envisioned as a large-group public process where stakeholders and the general public can see what’s going on and how decisions are made. Drafts of required reports to the regulatory entities would be vetted through this group. Membership would include current Steering Committee members plus Delta counties and other Delta interests, and others yet to be determined.
6. Real-Time Operations – A “response team” of NMFS/FWS/DFG with input from DWR/Bureau. Operate to increase fish benefits while meeting the supply target in an Annual Operations Plan within the flexibility of the Water Operations Conservation Measures (part of the BDCP). Must adhere to the permitted operating criteria in the BDCP permit/authorization.
7. Annual Operations Plan – developed by DWR/Reclamation with input from NMFS/FWS/DFG, must adhere to the permitted operating criteria in the BDCP permit/authorization.
8. Science – a chief scientist on the management entity staff would coordinate with the Delta Science Program, Independent Science Board and the Interagency Ecological program (IEP).
9. Relationship of the management entity with the Delta Stewardship Council and other government entities has yet to be determined.
10. Authorized Entities/Permittees – will be included in another part of the BDCP. Yet to be decided is what entity(ies) besides DWR will hold permits. What is the relationship of Reclamation as a federal agency to the state Natural Communities Conservation Plan (NCCP). What is the role of the Joint Powers Authority?

A draft implementation structure is included as an attachment. Note that it does not yet depict BDCP’s relationship to other Delta governance organizations such as the Council and Delta Protection Commission.

Among the issues the Council may wish to consider are:

- Does the Council / how does the Council wish to be involved in helping to shape further development of the governance portion of the BDCP (Chapter 7)? Monthly briefings or a more direct involvement through a Council member or staff?
- Interim Lead Scientist Cliff Dahm has been asked to help clarify the science portion and the relationships between Delta Science Program, Independent Science Board, the IEP and others. Does the Council wish to review Dr. Dahm’s suggestions or make additional recommendations?

DRAFT

June 16, 2010

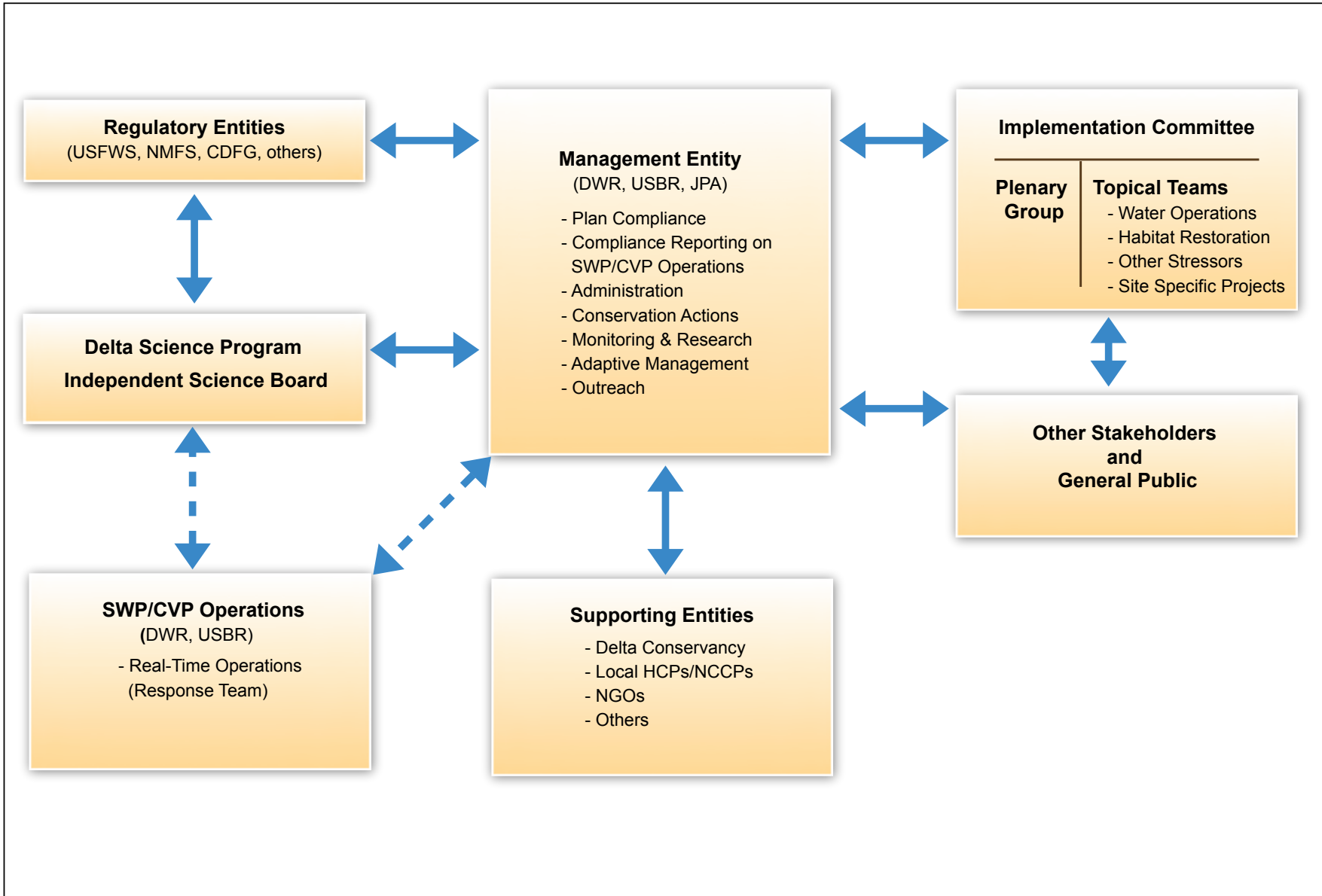


Figure 7.1 BDCP Implementation Structure

Adopt Process to Retain Independent Consultant Assistance for Review of BDCP Issues (Water Code §85210(b) and §85320)

Requested Action: Upon adoption, direct the Executive Officer at the direction of the Council committee to enter into a contract with an independent consultant to review BDCP issues.

Background

This sets forth the steps that the Council committee initiated to acquire an independent consultant to assist with review of Bay Delta Conservation Plan (BDCP). It describes the solicitation (purpose and description of requested services); process for advertising and selection process for choosing a consultant(s).

The Council at its May meeting approved the formation of a committee of two members to assist with the development of the solicitation and review of Statement of Qualification submissions.

The selection process, initiated by staff in consultation with the committee, utilizes the current Delta Plan Contract which provides that the Council engage the services of a subcontractor to perform an independent unbiased review of the BDCP and any related work products that may be included into the final Delta Plan. The final hiring decision will be made by the Council committee, and the resulting contract will be assigned to the Council.

There are three major phases of the contract, all in support of the Section 85320 of the California Water Code regarding BDCP. The phases include:

- Phase one: Selected consulting firm(s) must be able to provide a small team of experts who can devote a significant amount of time for the next six months through November, 2010 to provide the Council with information and analysis of the issues and decisions being made regarding the BDCP process, and assist the Council in meeting its obligations as a responsible agency and consult with lead agencies on BDCP.
- Phase two: Consultants will work with the Delta Independent Science Board to evaluate the draft Environmental Impact Report (EIR) that will be released by Department of Water Resources in spring of 2011. The consultant will work with Council staff to prepare briefings on the major issues and prepare formal comments that the Council may submit as a responsible agency.
- Phase three: This final phase will occur after the Department of Fish and Game certifies that the BDCP meets all requirements of a state natural

communities conservation plan and federal habitat conservation plan and is included in the Delta Plan. The Council is the designated appellate body if DFG's decision is appealed. Should the decision be appealed, the consultant would be required to review and discuss issues with the Council to support its appellate role.

The contractor(s) will perform services, as directed by the Council, through individual task orders. It is anticipated that task orders, issued upon execution of this contract, will include:

- Develop an overall work plan which includes project budgets, resources, schedules and dispute resolution;
- Develop white papers and issue papers which will be presented to the Council Board and other stakeholders;
- Analyze technical and policy issues;
- Provide progress reports to the Council Board, Delta Plan Consulting team and the Independent Science Board; and
- Draft responses to comments/questions regarding issues relating to the inclusion of BDCP or other plans into the Delta Plan.

The solicitation requires contractors to submit their qualifications by 3:00 p.m. on June 23, 2010. Council staff will compile the submissions and meet with the committee to review and select the consulting firm(s).

Staff anticipates the consultant selection process will be completed in first part of July 2010 with a fully executed contract by mid July 2010.

Fiscal Information

Work under this contract will be funded under the current Delta Plan Contract with funds transferred from the Council's general fund and appropriations from the Infrastructure Bond Act of 2006, Proposition 84, California Safe Drinking Water, Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

List of Attachments

Attachment 1 – Invitation to Submit Qualifications for Independent Consultant to Review BDCP

Contact

Angela D'Ambrosio
Special Assistant to the Executive Officer

Phone: (916) 445-5797

650 Capitol Mall
Sacramento, CA 95814

**Invitation to Submit Statement of Qualifications for
BDCP Independent Consultant**

**TO ALL PROSPECTIVE APPLICANTS
June 9, 2010**

The Delta Stewardship Council (Council) invites qualified individuals and firms to submit a Statement of Qualifications (SOQ). The successful applicant will provide independent review of the Bay Delta Conservation Plan (BDCP) and the BDCP Environmental Impact Report/Environmental Impact Statement on behalf of, and under the general direction of the Council. There may be multiple contracts executed for these services.

The Invitation contains a description of the qualifications required and directions for preparation and submittal of your response. **The SOQ must be received by 3:00 p.m. on June 23, 2010, at the address indicated in Section VI of the enclosed invitation.**

The Contractor may be required to work independently or partner with other Council employees or private professionals but always at the specific direction of the Council. It is anticipated that the selected contractor(s) will work as a subcontractor under the current Delta Plan contract.

The anticipated term of this agreement is from July 12, 2010 through December 31, 2012.

Council reserves the right to cancel or modify this Invitation up to the date and time the SOQ is due and to waive non-material defects with any of the SOQs. Additionally, Council is not responsible for any preparation costs incurred by parties submitting a SOQ.

The Delta Plan contract is completed in accordance with the State's General Terms and Conditions (available at Internet site <http://www.ols.dgs.ca.gov/standard+language>), and all provisions of the Delta Plan contract will be included in the Subcontract. These terms and conditions will become a part of the subcontract language and are **NON-NEGOTIABLE**. Any issues regarding these terms and conditions **MUST** be addressed during the question and answer period. If you do not have Internet capabilities, you may request a hard copy by contacting the person listed in Section II of the invitation.

The Contractor Certification Clauses (also available at the Internet site referenced above) contain terms and conditions that may apply to person(s) doing business with the State of California, and that may apply to your agreement. If awarded the contract, you must sign and return Page One of the CCC 307. The Certification must be renewed every three (3) years and will be updated when the State makes revisions to the clauses.

Please follow instructions in Section II of the enclosed Invitation for questions regarding services to be performed or submission requirements.

Sincerely,

Terry Macaulay
Deputy Executive Officer, Strategic Planning
Delta Stewardship Council

Enclosure

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I. Purpose and Description of Services

An independent consultant is needed to support the duties of the Council as a responsible agency and interact with the BDCP environmental review process. The independent consultant will directly advise the Council on the BDCP process and its relationship to, and consistency with, the Delta Plan. The independent consultant will also advise the Council in its role as an appellate body.

The independent consultant will review information and recommendations prepared by the BDCP Steering Committee since 2006 through 2011. As a responsible agency, the Council, with assistance from the independent consultant, will participate in a detailed review of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

II. Statement of Qualification Requirements (SOQ)

- A. The SOQ should contain, at a minimum, the following items, and other information that the applicant considers appropriate, should be included:
1. A brief statement of description of the applicant's qualifications to carry out the work. The SOQ must clearly identify the primary subcontractor and the nature of any relationships with other Contractor team members, including collaboration on previous work.
 2. A description of any and all Delta related projects and/or contracts the Contractor(s) is/are currently working on or has/have worked on in the past ten years. Special focus should be placed on large scale water and ecosystem restoration projects similar in scope to BDCP, such as Chesapeake Bay or the Everglades. Describe the projects, relationship to the Delta Plan and Bay Delta Conservation Plan, and any potential, real, or perceived conflicts and how the applicant would address them. It must be specifically stated that the Contractor and the Contractor team members have not participated in Bay Delta Conservation Plan contracts for the Bay Delta Conservation Plan Steering Committee and/or the Delta Habitat Conservation and Conveyance Plan.
 3. The name of the firm submitting the SOQ, mailing address, telephone number, and the individual with whom to communicate if further information is desired.
 4. A description of qualifications and experience in the following areas: Habitat Conservation Plans (HCPs), Natural Community Conservation Plans (NCCPs), ecological restoration and conservation of biological resources, development of environmental documents under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), environmental permitting, and interpretation of results for hydrologic, hydraulic, and hydrodynamic, aquatic biology, population, and ecology models.
 5. Resumes of all key personnel that would be provided in conjunction with this contract.
 6. Client references for the Contractor on three most recent comparable contracts, and client references for each subcontractor on two most recent comparable contracts. Three references for the prime Contractor and two references for each subcontractor.
 7. Location of firm office(s) for this project.
- B. After the SOQ submittal date and time, each SOQ will be checked for the presence or absence of required information in conformance with the submission requirements of this Invitation. If any required information is absent, the SOQ shall be rejected.

- C. A panel of Council personnel will evaluate the SOQs in accordance with the stated Selection Criteria and areas of knowledge and experience. Separate interviews may then be held with the applicants deemed to be the most highly qualified to provide the needed services. If any presentations are required to be made, the presentation's cost will be the responsibility of the applicant. No reimbursement will be made by Council.
- D. Council will require submission of a schedule of hourly rates and all associated costs, provided in a sealed envelope marked with **Invitation of Statement of Qualifications for Independent BDCP Consultant and name of Contractor as it appears on SOQ**, at the time of interview. After the interviews have been completed, the applicants will be ranked and a list of these rankings will be presented to the Council board for its review and direction. The rate envelope provided at the interview will only be opened after the most qualified has been determined and only the envelope of the most qualified will be opened. If Council is unable to successfully negotiate a cost agreement with the most qualified applicant, negotiations will begin with the next most qualified applicant, and so on. If Council is unable to negotiate a fair and reasonable price with any applicant, Council may elect not to award the contract and may elect to proceed with a new solicitation. The rate envelopes of the unsuccessful candidates will be returned unopened.
- E. Unsuccessful applicants will be notified by Council following award of the contract.
- F. Evaluations will be available for public inspection at the conclusion of the selection and award process under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public.

III. Submission of Statement of Qualifications

- A. Ten copies of the SOQ must be submitted (mailed or hand delivered) to the following addresses:

Mail: Delta Stewardship Council Attention: Terry Macaulay 650 Capitol Mall Sacramento, CA 95814 Phone: (916) 445-5825	Hand Delivery: Delta Stewardship Council Attention: Terry Macaulay 650 Capitol Mall Sacramento, California 95814 Phone: (916) 445-5825
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- B. The SOQs must be received by 3:00 p.m. on June 23, 2010. SOQs received after the due date and time will be returned unopened to the submitting party.
- C. Council is not responsible for any costs incurred by the applicants for preparation of SOQs.
- D. All materials (except brochures) submitted in response to this Invitation shall become State property and will not be returned. Brochures of non-selected applicants may be picked up where they were submitted after award has been made.
- E. An SOQ may be rejected if it is conditional or incomplete, or if it contains any proposed alternate terms, alterations of form, or other irregularities of any kind. The State may reject all SOQs and may cancel or modify this Invitation up to the date the SOQ is due. Council reserves the right to reject all SOQs for reasonable cause.

- F. An individual who is authorized to bind the firm contractually shall sign the Potential Qualifying Firms Certification Sheet. The signature must indicate the title or position that the individual holds in the firm. An unsigned certification sheet will be rejected and cause the SOQ to be deemed nonresponsive.
- G. Before the SOQ submission deadline, an applicant may withdraw its SOQ by submitting a written withdrawal request to the State, signed by the applicant or an agent authorized in accordance with the preceding paragraph. An applicant may thereafter submit a new SOQ prior to the SOQ submission deadline. SOQs may not be revised without good cause and Council's consent subsequent to SOQ submission deadline.
- H. Council may modify the Invitation prior to the date fixed for submission of SOQs by the issuance of an addendum to all parties who received an Invitation package.
- I. Applicants are cautioned not to rely on Council, during the evaluation, to discover and report any defects and errors in the submitted documents. Applicants, before submitting their documents, should carefully proof them for errors and adherence to the invitation requirements. Council may, but is not required to, waive minor deviations from submission requirements.

V. Contract Obligations

- A. Council reserves the right to disapprove the assignment or the continuing assignment of specific contractor personnel, subcontractors, and subcontractor personnel. The Contractor's withdrawal of said personnel will be within two working days of Council's Notice of Disapproval. Replacement personnel will be assigned within seven days after Council gives notice of disapproval. Replacement personnel must be approved by Council prior to their participation in the contract. Resumes will be required for any new personnel of the Contractor or subcontractor.
- B. The following documents are included in the Delta Plan contract with the Council. The following items will be included in the subcontract agreement with the Contractor:
 - 1. The description of work to be performed is Exhibit A, Scope of Work.
 - 2. General Terms and Conditions located at <http://www.ols.dgs.ca.gov/standard+language>.
 - 3. Special Terms and Conditions in Exhibit B.
 - 4. All Additional Provisions listed in Exhibit C and any corresponding attachments.

SOQ CHECKLIST

Please submit the following items in your SOQ. The SOQ will not be considered responsive unless the following documents are returned:

- ___ Brief Statement of Qualifications
- ___ Description of any/all ongoing Delta related projects and/or contracts
- ___ Resumes of Key Personnel
- ___ Potential Qualified Firms Certification Sheet
- ___ References
- ___ Names, qualifications and experience of each firm who will participate in work

Please return this checklist with your SOQ.

POTENTIAL QUALIFIED FIRMS - CERTIFICATION SHEET
Delta Stewardship Council – BDCP Independent Review

This certification sheet must be signed and returned along with all the required documents, as indicated on the Statement of Qualification Requirements, as an entire package with original signatures. The SOQ must be transmitted in a sealed envelope in accordance with all SOQ instructions.

- A. **Your all-inclusive SOQ is submitted as follows:**
- B. All Attachments follow behind this cover letter. **(See SOQ Checklist)**
- C. Your signature affixed hereon and dated certifies that you have complied with all the requirements of this INVITATION document. Your signature authorizes the verification of this certification.

>>> AN UNSIGNED SOQ WILL BE CAUSE FOR REJECTION <<<

1. Company Name	2. Telephone Number ()	2a. Fax Number ()
3. Address		
Indicate your organization type:		
4. <input type="checkbox"/> Sole Proprietorship	5. <input type="checkbox"/> Partnership	6. <input type="checkbox"/> Corporation
Indicate the applicable employee and/or corporation number:		
7. Federal ID No. (FEIN)	8. California Corporation No.	
Indicate applicable license and/or certification information:		
9. Contractors' State License Board Number	10. PUC License Number CAL-T-	11. Required Licenses/Certifications
12. Bidder's Name (Print)	13. Title	
14. Signature	15. Date	
16. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as:		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> a. Small Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter certification number: _____ </div> <div style="width: 45%;"> b. Disabled Veteran Business Enterprise Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, enter your service code below: _____ </div> </div>		
NOTE: A copy of your Certification is required to be included if either of the above items is checked "YES." Date application was submitted to OSDS, if an application is pending: _____		

**(SEE NEXT PAGE FOR EXPLANATIONS ON POTENTIAL QUALIFIED FIRMS
CERTIFICATION SHEET)**

**EXPLANATION OF ITEMS ON POTENTIAL QUALIFIED FIRMS
CERTIFICATION SHEET**

- A. The Potential Qualified Firms – Certification Sheet on page 13 shall be completed and submitted in accordance with the SOQ requirements. Your signature on this document certifies that you complied with all the INVITATION requirements.
- (1), (2), (2a), and (3) are self-explanatory.
- (4) A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
- (5) A partnership is a voluntary agreement between two or more competent persons, as co-owners, to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them.
- (6) A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
- (7) To be used for company identification and verification of tax compliance.
- (8) To be used for checking if corporation is in good standing with the State of California.
- (9) To be used for verification of Contractor's license for Public Works Agreements.
- (10) To be used for verification of Public Utilities Commission (PUC) license for Public Works Agreements.
- (11) Complete, if applicable, by indicating the type of license and/or certification for services described.
- (12), (13), (14), and (15) are self-explanatory.
- (16) Refer to the Small Business and DVBE definitions for further information.

REFERENCES

Provide references (3 for the prime Contractor and 2 for subcontractor) of similar types of services performed within the last five years.

Name of Firm:		Telephone Number:	
Name of Contact:			
Street Address:		City:	State: Zip Code:
Year Service Performed:			
Service:			

Name of Firm:		Telephone Number:	
Name of Contact:			
Street Address:		City:	State: Zip Code:
Year Service Performed:			
Service:			

Name of Firm:		Telephone Number:	
Name of Contact:			
Street Address:		City:	State: Zip Code:
Year Service Performed:			
Service:			

SCOPE OF WORK

BACKGROUND:

The Delta Stewardship Council (Council) was established by SBX7 1 (Ch 5. Stats. 09-10, 7th Ex Sess.), which took effect February 3, 2010. Pursuant to that legislation, the Council is required to develop, adopt, and commence implementation of a comprehensive resources management plan for the Delta, referred to as the Delta Plan, on or before January 1, 2012. Preparation of the Delta plan will be a major planning effort that may incorporate other significant, ongoing planning efforts, some directed by statute, such as the Bay Delta Conservation Plan (BDCP). The legislation contained specific requirements for the BDCP process, and specified that the Council have a consultant role with the lead agency (DWR), a responsible agency role under CEQA and an appeal role under certain conditions.

As part of this ongoing process, the Council awarded a contract to CH2MHill, Inc. on April 30, 2010 to assist in preparation of the Delta Plan and required environmental documents. That contract provides that the Council will engage the services of a subcontractor to perform an independent unbiased review of the BDCP and any related work products that may be included into the final Delta Plan. Funding for the independent review of BDCP issues will come from the contract amount provided to CH2M Hill, but the selection of the independent consultant will be totally at the direction of the Council.

Some funding to support the delta plan development and independent review of BDCP (through September, 2010) has been approved and further funding is included in the Council budget which will require legislative approval. Final selection of the Contractor will require approval by the Council.

PURPOSE:

There are three major phases of this contract, all in support of Section 85320 of the California Water Code regarding BDCP.

In the first phase the selected consulting firm(s) must be able to provide a small team of experts (estimated at 3-4 people) who can devote a significant portion of their time for the next six months, through November, 2010. This is intended to provide the Council with necessary information and analysis of the issues and decisions being made in the BDCP process, and assist the Council in meeting its obligations as a responsible agency and in consulting with the lead agencies on BDCP. This phase is expected to last from the date of hiring to December 2010.

During the second phase, estimated to be from March 2010 to July 2010, the consultant will be required to assist on an as-needed basis. It is currently estimated that the Department of Water Resources will issue a Draft Environmental Impact Report (EIR) in the spring of 2011. In this phase, the independent consultant will work with the Delta Independent Science Board (which is required under law to evaluate the EIR and submit a report to the Council). The consultant will work with staff to assist the Council by preparing briefings on the major issues and preparing formal comments that the

Council may submit as a responsible agency.

The third phase would occur after the Department of Fish and Game certifies that the BDCP meets all requirements to be included in the Delta Plan and the appeal process allowed in Section 85320 is invoked. In that case the Council anticipates the independent consultant will provide appropriate support for the Council in its' appellate role. It is understood that if the BDCP process is moving toward completion, Council staff may request that consultants prepare themselves to review and discuss issues relating to a pending appeal.

The specific charge of the Independent consultant is outlined as follows:

1. Attend both BDCP and Council Meetings as requested. Read and understand background documents. Under the direction of staff and Council, prepare briefings for the Council.
2. Review work products including studies, workshops and other materials, of the Delta Independent Science Board with respect to development of the BDCP.
3. Develop and report regularly to the Council on decisions and activities of the BDCP, making recommendations and suggestions that identify impending issues and significant interconnections.
4. Assist the Council in anticipating issues and identify areas of interconnection among the BDCP and the Delta Plan that otherwise might be missed and suggest solutions where needed to interconnecting issues (e.g. program collaborations, reviews or workshops)
5. Analyze existing data related to specific actions or programs relevant to the Delta Plan.
6. In February and March of 2011 participate in a detailed review of the Environmental Impact Report/Environmental Impact Study (EIR/EIS) and report to the Council on the EIR/EIS.
7. At the end of the process, participate as necessary in discussions regarding the related work efforts should there be an appeal on inclusion of BDCP or any other work product into the Delta Plan.

DELIVERABLES:

The work to be performed under this contract will be done according to Task Order. Each Task Order will provide the details required for the deliverables with instructions for presentation and support of the requested product. Where applicable, deliverables must be presented electronically as well as in other appropriate formats.

The contractor will be responsible for, but not limited to, the following services:

1. Develop an overall work plan which includes project budgets, needed resources, schedules and dispute resolution.
2. Develop white papers and issue papers and present information to the Council Board and other stakeholders.
3. Make policy recommendations and complete technical and policy issues analysis.
4. Provide timely progress reports to the Delta Council Board, Delta Plan Consulting team and the Independent Science Board.
5. Prepare draft responses to comments/questions regarding issues relating to the inclusion of BDCP or other plans into the Delta Plan.

PROGRAM ACTIVITIES

Contractor(s) will perform services defined in writing, under individual task orders. The work will comprise a variety of tasks that include reviewing the BDCP efforts.

CONTACT INFORMATION

The Contract representatives during the term of this agreement will be:

Delta Stewardship Council

Terry Macaulay
650 Capitol Mall, 5th Floor
Sacramento, CA 95814
Phone: (916) 445-5825
Fax: (916) 445-7297
Email:
terry.macaulay@deltacouncil.ca.gov

(Name of Selected Contractor)

(Name)
(Street Address)
(City, State Zip Code)
Phone:
Fax:
Email:

Contract representatives may be changed by written notice to the other party.

**EXHIBIT D - Special Terms and Conditions for
Department of Water Resources
(Over \$5,000 Standard Payable)**

1. **EXCISE TAX:** The State of California is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on employees' wages.
2. **RESOLUTION OF DISPUTES:** In the event of a dispute, Contractor shall file a "Notice of Dispute" with the Director or the Director's Designee within ten (10) days of discovery of the problem. The State and Contractor shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the State and Contractor are unable to resolve the dispute, the decision of the Director or the Director's Designee shall be final, unless appealed to a court of competent jurisdiction.

In the event of a dispute, the language contained within this agreement shall prevail over any other language including that of the bid proposal.

3. **PAYMENT RETENTION CLAUSE:** Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Section 10346 pending satisfactory completion of all services under the contract.
4. **AGENCY LIABILITY:** The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
5. **POTENTIAL SUBCONTRACTORS:** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.

6. SUBCONTRACTING: The Contractor is responsible for any work it subcontracts. Subcontracts must include all applicable terms and conditions of this Agreement. Any subcontractors, outside associates, or consultants required by the Contractor in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified in the bid or agreed to during negotiations for this Agreement, or as are specifically authorized by the Contract Manager during the performance of this Agreement. Any substitutions in, or additions to, such subcontractors, associates or consultants shall be subject to the prior written approval of the Contract Manager. Contractor warrants, represents and agrees that it and its subcontractors, employees and representatives shall at all times comply with all applicable laws, codes, rules and regulations in the performance of this Agreement. Should State determine that the work performed by a subcontractor is substantially unsatisfactory and is not in substantial accordance with the contract terms and conditions, or that the subcontractor is substantially delaying or disrupting the process of work, State may request substitution of the subcontractor.
7. RENEWAL OF CCC: Contractor shall renew the Contractor Certification Clauses or successor documents every three (3) years or as changes occur, whichever occurs sooner.
8. REPORT OF RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 12200-12217, et seq. and 12153-12156, et seq. the contractor must complete and return the form DWR 9557, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 9557 is attached to this Exhibit and made part of this contract by this reference.
9. TERMINATION CLAUSE: The State may terminate this contract without cause upon 30 days advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.
10. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
11. PRIORITY HIRING CONSIDERATIONS: For contracts, other than consulting services contracts, in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 (Public Contract Code Section 10353).
12. EQUIPMENT RENTAL AGREEMENTS: This provision shall apply to equipment rental agreements. The State shall not be responsible for loss or damage to the rented equipment arising from causes beyond the control of the State. The State's responsibility for repairs and liability for damage or loss to such equipment is restricted to that made necessary or resulting from the negligent act or omission of the State or its officers, employees, or agents.
13. CONFLICT OF INTEREST:
 - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) Current State Employees: (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

- (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

(2) Former State Employees: (PCC §10411)

- (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Representational Conflicts of Interest:

The Contractor must disclose to the DWR Program Manager any activities by contractor or subcontractor personnel involving representation of parties, or provision of consultation services to parties, who are adversarial to DWR. DWR may immediately terminate this contract if the contractor fails to disclose the information required by this section. DWR may immediately terminate this contract if any conflicts of interest cannot be reconciled with the performance of services under this contract.

e. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

“Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

f. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

ADDITIONAL PROVISIONS

1. **COPYRIGHT:** All rights in copyright works created by the Contractor in the performance of work under this agreement are the property of the State.
2. **REIMBURSEMENT CLAUSE:** If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Travel and Per Diem Expenses, has been attached and labeled as Attachment I. Contractor's designated headquarters for the purpose of computing such expenses shall be: _____.
3. **CERTIFICATE OF INSURANCE:**

General Provisions Applying to All Policies

- a. **Coverage Term** – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- b. **Policy Cancellation or Termination & Notice of Non-Renewal** – Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the State. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- c. **Deductible** – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- d. **Primary Clause** – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- e. **Insurance Carrier Required Rating** – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- f. **Endorsements** – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- g. **Inadequate Insurance** – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.

Insurance Requirements

- h. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include The State of California, its officers, agents, employees and servants as additional insurers, but only with respect to work performed under the contract. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management. In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor.
- i. Automobile Liability – Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.
- j. Professional Liability – Contractor shall maintain Professional Liability covering any damages caused by a negligent error, act or omission with limits not less than \$1,000,000 per occurrence and \$1,000,000 policy aggregate. The policy's retroactive date must be displayed on the certificate of insurance and must be before the date this contract was executed or before the beginning of contract work.

Insurance certificates must have an original signature and contain the Agreement number.

Subsequent renewals of the insurance certificate shall be sent to the **Department of Water Resources, A&E Service Agreement Section, 1416 Ninth Street, Room 406-10, Sacramento, California 95814**. This name and address shall appear on the certificate as the certificate holder.

4. PERMITS AND LICENSES: Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.
5. POLITICAL REFORM ACT: Contractor shall comply with the language stated in the Standard Contract Provisions Concerning the Political Reform Act, Attachment 2. Contractor shall file a Statement of Economic Interests (Fair Political Practices Commission Form 700) upon assuming office, annually, and within 30 days after leaving office.
6. CONTRACT AMENDMENTS – DVBE PROGRAM REQUIREMENTS: Disabled Veteran Business Enterprise (DVBE) program requirements shall be included and made a part of any subsequent contract amendment(s) when DVBE program requirements were included as part of the Department's original solicitation/contract effort. DVBE participation program goals (3 percent) are extended through the amended contract termination date and include any additionally encumbered funds that are a result of the contract amendment. The 90-Day and Final DVBE Subcontracting Activity Report shall be included in all subsequent contract amendment(s). Contractor shall be responsible for continued program compliance and reporting.
7. 90-DAY AND FINAL DVBE SUBCONTRACTOR ACTIVITY REPORTS

The Contractor is required to furnish the Department with reports at 90-day intervals identifying DVBE subcontractor(s) activities performed or commodities used, and the total paid to the subcontractor during the performance of the contract term. A final activity report will be due prior to the contract expiration date. If multiple DVBE contractors are providing services or commodities, the Contractor will furnish individual reports for each separate DVBE subcontractor(s) used.

The first report will be due 90-days from the date of contract approval. At the request of the Department, Contractor will submit copies of the DVBE contractor's paid invoices issued for that 90-day reporting period or final report.

If the Contractor fails to furnish the required reports, the Department may withhold final payment until the Contractor provides the required reports and, when requested by the Department, copies of paid invoices.

Final reports must be received by the Department no less than 14 days prior to the contract expiration date.

Reports shall be made using the DVBE Activity Report Form, Attachment 3. ***All reports shall be made to both the Department of Water Resources DVBE Advocate and the Project Manager for the contract as follows:***

Mail Reports to:

Department of Water Resources
DVBE Advocate
1416, Ninth Street, Room 315
P.O. Box 942836
Sacramento, California, 95814
Fax Number: (916) 653-6576

Department of Water Resources
Terry Macaulay
John Moss Federal Building
650 Capitol Mall, 5th Floor
Sacramento, CA 95814
Fax Number: (916) 445-7297

8. USE OF A FOREIGN LANGUAGE IN PUBLIC SERVICES: If Contractor's duties include public information, public outreach, or rendering of services to the public whereby contact is made with a substantial number of non-English speaking persons, Contractor shall employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services in the languages of the non-English speaking persons.
9. PROTECTION OF CONFIDENTIAL AND SENSITIVE INFORMATION: This shall apply to all Contractors whose terms with the Department require or permit access to Confidential or Sensitive Information in conducting business with the Department or performing duties under a Contract with the Department. Contractor shall impose all the requirements of this provision on all of its officers, employees, and Affiliates with access to Confidential and/or Sensitive Information in accordance with Attachment 4. Also a Nondisclosure Certificate, Attachment 5, must be signed by all personnel with access to Confidential and Sensitive Information and submitted to the Department prior to being allowed such access.

TRAVEL AND PER DIEM EXPENSES

I. SHORT-TERM PER DIEM EXPENSES

- A. In computing reimbursement for continuous short-term travel of more than 24 hours and less than 31 consecutive days, the employee will be reimbursed for actual costs up to the maximum allowed for each meal, incidental, and lodging expense for each complete 24 hours of travel, beginning with the traveler's times of departure and return, as follows:

1. On the first day of travel on a trip of 24 hours or more:

Trip begins at or before 6 a.m.	Breakfast may be claimed on the first day.
Trip begins at or before 11 a.m.	Lunch may be claimed on the first day.
Trip begins at or before 5 p.m.	Dinner may be claimed on the first day.

2. On the fractional day of travel at the end of a trip of more than 24 hours:

Trip ends at or after 8 a.m.	Breakfast may be claimed.
Trip ends at or after 2 p.m.	Lunch may be claimed.
Trip ends at or after 7 p.m.	Dinner may be claimed.

If the fractional day includes an overnight stay, receipted lodging may also be claimed. No meal or lodging expense may be claimed or reimbursed more than once on any given date or during any 24-hour period.

3. Reimbursement shall be for actual expenses, subject to the following maximum rates:

Meals:

Breakfast	\$ 6.00	Receipts are not required for regular short-term travel meals
Lunch	\$ 10.00	
Dinner	\$ 18.00	
Incidentals	\$ 6.00	

Lodging:

Statewide	Actual up to \$84.00 plus tax
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When required to conduct State business and obtain lodging in the counties of Los Angeles and San Diego, reimbursement will be for actual receipted lodging to a maximum of \$110 plus tax.

When required to conduct State business and obtain lodging in the counties of Alameda, San Francisco, San Mateo, and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of \$140 plus tax.

If lodging receipts are not submitted, reimbursement will be for meals only at the rates and time frames set forth in B#1 below.

- B. In computing reimbursement for continuous travel of less than 24 hours, actual expenses, up to the maximums in #3 above, will be reimbursed for breakfast and/or dinner and/or lodging in accordance with the following time frames:
1. Travel begins at or before 6 a.m. and ends at or after 9 a.m.: Breakfast may be claimed. Travel begins at or before 4 p.m. and ends at or after 7 p.m.: Dinner may be claimed. If the trip of less than 24 hours includes an overnight stay, receipted lodging may be claimed. No lunch or incidentals may be reimbursed on travel of less than 24 hours.

2. Employees on short-term travel who stay in commercial lodging establishments or **commercial campgrounds** will be reimbursed for actual lodging expenses substantiated by a receipt. Employees who stay with friends or relatives, or who do not produce a lodging receipt, will be eligible to claim meals only.

II. LONG-TERM TRAVEL AND PER DIEM EXPENSES

A. Employee maintains a separate residence in the headquarters area:

1. Long-term travelers who maintain a permanent residence at their primary headquarters may claim daily long-term lodging up to \$24.00 with a receipt, and long-term meals of \$24.00 for each period of travel from 12 to 24 hours at the long-term location. For travel of less than 12 hours, the traveler may claim either \$24.00 in receipted lodging **or** \$24.00 in long-term meals.

B. Employee does not maintain a separate residence in headquarters area:

1. Long-term travelers who do not maintain a permanent residence at their headquarters may claim daily receipted lodging up to \$12.00, and long-term meals of \$12.00 for each period of travel from 12 to 24 hours at the long-term locations. For travel of less than 12 hours, the travelers may claim either \$12.00 in receipted lodging **or** \$12.00 in long-term meals.

III. MILEAGE REIMBURSEMENT

Reimbursement for personal vehicle mileage is 50 cents per mile.

There is no specific rate determined for the reimbursement for personal vehicle mileage using a specialized vehicle that has been modified to accommodate disabilities. In these cases, the 55 cents per mile reimbursement will apply.

IV. VEHICLE RENTAL

Reimbursement for vehicle rental shall be for actual and necessary costs of such rental and airplane usage shall be allowed at the lowest fare available. Claims for reimbursements shall be allowed upon submittal of the appropriate receipt. Refer to California Code of Regulations, Title 2, Sections 599.627 and 599.628.

California Department of Water Resources

**Standard Contract Provisions Regarding
Political Reform Act Compliance**

1. POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code §82048 and Title 2, California Code of Regulations §18701. Accordingly, when notified by DWR, such persons shall complete and submit to DWR's Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement. The Contractor shall then file the Form 700 annually and will advise DWR if changes in key staff or duties occur. A leaving office statement must also be filed upon completion of all contract assignments. The financial interests disclosed shall be for DWR Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC).
- b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code §87100. Contractor shall notify the Department immediately of any potentially disqualifying conflict of interest. Government Code §87100 provides:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”
- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
 - (1) Failure to complete and submit all required Form 700s within the 30-day period as required in paragraph A above, or respond to any request from DWR Personnel Officer for additional information regarding any such Form 700s;
 - (2) Failure to notify DWR of a potentially disqualifying conflict of interest;

- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code §87100; provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.

Protection of Confidential and Sensitive Information

1. For purposes of this Exhibit, “Contractor” means any contractor or researcher, including a Non-State Entity contractor or researcher, receiving funds from, doing business with, conducting research for, or performing services for the Department of Water Resources (“Department”) pursuant to a contract, purchase order, research agreement, grant or loan agreement, joint powers agreement, public works contract, or other contractual vehicle (collectively “Contract”). The term “Contractor” also includes Contractor’s officers and employees and Affiliates. For purposes of this Exhibit, the term “Affiliate” means a person or entity forming a partnership, joint venture, subcontract, sales contract, or other legal relationship with Contractor to carry out the terms of the Contract.
2. This Exhibit shall apply to all Contractors the terms of whose Contracts with the Department require or permit access to Confidential or Sensitive Information in conducting business with the Department or performing duties under a Contract with the Department.
3. Contractor shall impose all the requirements of this Exhibit on all of its officers, employees and Affiliates with access to Confidential and/or Sensitive Information.
4. For purposes of this Exhibit, “Non-State Entity” shall mean a business, organization or individual that is not a State entity, but requires access to State information assets in conducting business with the State. This definition includes, but is not limited to, researchers, vendors, consultants, and their subcontractors, officers, employees, and entities associated with federal and local governments and other states.
5. For purposes of this Exhibit, “Confidential Information” means information, the disclosure of which is restricted or prohibited by any provision of Stat or federal law or which is treated as privileged or confidential under such laws. Such Confidential Information includes, but is not limited to, information that is exempt from disclosure under the California Public Records Act (Government Code sections 6250-6255), public social services client information described in California Welfare and Institutions code section 10850, and “personal information” about individuals as defined in California Civil Code Section 1798.3 of the Information Practices Act (IPA) if the disclosure of the “personal information” is not otherwise allowed by the IPA. Such Confidential Information may also include financial, statistical, personal, technical, and other data and information relating to operation of the Department.
6. For purposes of this Exhibit, “Sensitive Information” means information that requires special precautions to protect it from unauthorized modification or deletion. Sensitive information may be either public records or Confidential Information. Examples include statistical reports, financial reports, and login procedures.
7. Contractor shall take all necessary measures to protect Confidential or Sensitive Information to which it or its Affiliates gain access from unauthorized access (accidental or intentional), modification, destruction, or disclosure. These measures may include, but are not limited to: password protection of electronic data, encrypted transmission of electronic data, and secure mailing and locked storage of paper and taped copies. Such measures may also include establishment of secure workstations and maintenance of a secure workstation access log.

Contractors shall also apply appropriate security patches and upgrades and keep virus software up-to-date on all systems on which Confidential or Sensitive Information may be used.

8. Contractors shall ensure that all media, including electronic media, containing Confidential or Sensitive Information, to which they are given access are protected at the level of the most confidential or sensitive piece of data on the media.
9. Contractor and Affiliate personnel allowed access to Confidential and Sensitive Information shall be limited to those persons with a demonstrable business need for such access. Contractor shall maintain a current listing of all Contractor and Affiliate personnel with access to Confidential and Sensitive Information.
10. Contractor shall notify Department promptly if a security breach involving Confidential or Sensitive Information occurs or if Contractor becomes legally compelled to disclose any Confidential Information.
11. Contractor shall comply with all State policies and laws regarding use of information resources and data, including, but not limited to, California Government Code section 11019.9 and Civil Code sections 1798 et seq. regarding the collection, maintenance and disclosure of personal and confidential information about individuals.
12. If Contractor obtains access to Confidential Information containing personal identifiers, such as name, social security number, address, date of birth, race/ethnicity and gender of individuals, Contractor shall substitute non-personal identifiers as soon as possible.
13. All data, reports, information, inventions, improvements and discoveries used, compiled, developed, processed, stored or created by Contractor or Contractor's Affiliates using Confidential and/or Sensitive Information shall be treated as Confidential and/or Sensitive Information by the Contractor and Contractor's Affiliates. No such data, reports, information, inventions, improvements or discoveries shall be released, published or made available to any person (except to the Department) without prior written approval from the Department.
14. At or before the termination date of the Contract, Contractor shall either (a) destroy all Confidential and Sensitive Information in accordance with approved methods of confidential destruction; or (b) return all Confidential and Sensitive Information to the Department; or (c) if required by law to retain such information beyond the termination date of the contract, provide for the Department's review and approval a written description of (i) applicable statutory or other retention requirements; (ii) provision for confidential retention in accordance such requirements and the terms of this Exhibit and (iii) provision for eventual destruction in accordance with all applicable provisions of State and federal law using approved methods of confidential destruction.
15. Contractor shall cooperate with the Department's Information Security Officer or his designee in carrying out the responsibilities set forth in this Exhibit.
16. Failure to adhere to these requirements may be grounds for termination of the Contract and for imposition of civil and criminal penalties.

Exhibit C, Attachment 4
Page 1 of 1

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential and Sensitive Information is provided to me pursuant to the terms and restrictions of the **Protection of Confidential and Sensitive Information**, Exhibit E, Attachment 4 of Contract No. _____ between _____ and the California Department of Water Resources. I hereby agree to be bound by those terms and restrictions. I understand that all Confidential and Sensitive Information, as defined in the **Protection of Confidential and Sensitive Information**, and any notes or other memoranda, or any other form of information, electronic or otherwise that copies or discloses Confidential Information, shall not be disclosed to anyone other than in accordance with the **Exhibit E, Attachment 4**. I acknowledge that a violation of this certificate may result in termination of the Contract and/or imposition of civil or criminal penalties.

Signed: _____

Typed Name and Title: _____

Representing (give name of Contractor/Affiliate): _____

Date: _____

Administrative Procedures Governing Appeals

Summary: Information on Natural Communities Conservation Plans and Habitat Conservation Plans. A follow-up, informational briefing focused on the California Environmental Quality Act (CEQA) will be scheduled for a future Council meeting.

Background

At its May meeting, the Council received a lengthy background briefing on the Bay Delta Conservation Plan (BDCP). The Council's enabling legislation (the Sacramento-San Joaquin Delta Reform Act of 2009) provides for incorporation of the BDCP into the Delta Plan if the BDCP meets certain requirements, as determined by the Department of Fish and Game (DFG) [and if the BDCP has been approved as a habitat conservation plan under federal law].

First, the BDCP must be approved by DFG as a Natural Community Conservation Plan (NCCP) pursuant to the Natural Community Conservation Planning Act under state law (NCCPA; commonly referred to as the "gold standard" of species and habitat conservation planning). Second, DFG must determine that the BDCP complies with the California Environmental Quality Act (CEQA), including a comprehensive review and analysis of certain specified criteria (concerning flow and other operational criteria, conveyance alternatives, climate change, fish and aquatic resources, flood management, natural disasters, and Delta water quality). (see Water Code section 85320(b)).

DFG's determination that the BDCP has met the requirements for inclusion in the Delta Plan (compliance with both NCCPA and the specific CEQA criteria) may be appealed to the Council (see Water Code section 85320(e)). Consequently, it is necessary for the Council to develop a working knowledge of both of these areas of law to prepare for any such appeal.

The Department of Fish and Game will provide to the Council at its June meeting a follow-up, informational briefing focused on Natural Community Conservation Plans (and Habitat Conservation Plans), and how the BDCP compares to those plans developed to date.

List of Attachments

Attachment 1 – Materials from Department of Fish and Game

Contact

Chris Stevens
Chief Counsel

Phone: (916) 445-0441



Regional Conservation Plans Protect Species and Ecosystems in California

Summary paper on Natural Community Conservation Plans, Habitat Conservation Plans, and the Bay Delta Conservation Plan

prepared by

California Department of Fish and Game

June 2010

California: Birthplace of Habitat Conservation Planning

Thirty years ago, a stand-off threatened both urban development and the last remaining habitat in the San Francisco Bay Area for the endangered Mission Blue Butterfly. That conflict spawned the first federal Habitat Conservation Plan (HCP) in the nation, the San Bruno Mountain HCP (approved in 1983), and it motivated an entirely new discipline of land use practice, called “collaborative conservation,” in which California very much remains the leader. That novel solution at San Bruno Mountain most notably featured a partnership designed specifically to conserve the ecosystem upon which the Mission Blue and other listed species depend, while ultimately contributing to recovery of the species. This first habitat conservation plan embraced participation by all interested parties, including private landowners as well as government agencies, and it has paved the way nationwide for hundreds of other locally-driven conservation plans.

In HCPs, impact mitigation and minimization are implemented on a case-by-case basis. Mitigation in HCPs in California has largely occurred on a “pay-as-you-develop” basis, resulting typically in incrementally acquired mitigation sites that often remain unconnected over time. Although monitoring and adaptive management at some level are required in all HCPs, there is no obligation to assemble functional reserve systems within a specified period of time, and it has been very difficult to demonstrate conservation value of the sites.

Early HCPs in California were fraught with both implementation difficulties and lack of understanding of ecosystem function, but many improvements have been made to ensure that conservation through these plans is comprehensive and robust. There is much optimism that newly-developing federal HCPs will incorporate the lessons that have been learned in the very first HCPs, and that



Department of Fish and Game

conservation through HCPs, especially when they are linked with California's Natural Community Conservation Plans (NCCPs), will result in species and habitat recovery using an ecosystem conservation approach.

Two Decades of Ground-Breaking Landscape Conservation Planning

Within ten years of approval of the first HCP in 1983, the State of California embarked upon an unprecedented endeavor to proactively bridge the conflicting needs of biodiversity conservation and economically profitable land use at a much larger scale. The revolutionary program that emerged, called Natural Community Conservation Planning (NCCP), was designed to complement the habitat conservation planning already occurring at the federal level through HCPs.

Local, state, and federal partners all contribute financially to developing and implementing the plans, and every effort is made to base the plans on the best available science and to utilize systematic conservation approaches. The legal statutes that govern regional conservation planning in California, namely the federal ESA (Section 10(a)(1)(B) and Five-Point Policy addendum (2000)) and the State of California NCCP Act (Fish and Game Code Section 2800 et. seq. (2003)), have raised the standard for creating superior regional conservation plans that have the highest probability of both short- and long-term success.

Today in California, most new federal and state multiple species conservation plans are amalgamated into jointly developed NCCP/HCPs, providing permanent landscape-level conservation in addition to impact mitigation. At least 22 of these complex NCCP/HCPs are in progress or approved, with 10 million acres covered by the planning areas and 2 million acres of land already committed to conservation. At least 10 other non-NCCP HCPs (permitted by the State through the California Endangered Species Act (CESA)) are also in process or adopted. Without establishment of the NCCP program in 1991, the acute tension and the stalemate that existed between the building industry and environmentalists over degradation and destruction of coastal sage scrub habitat for the Coastal California Gnatcatcher in southern California would likely have politically precipitated a severe weakening of the federal Endangered Species Act (ESA).

Ecosystem Goals of NCCP/HCPs

NCCP/HCPs are preferred landscape conservation tools in California. They provide protection and long-term conservation and management for common as well as threatened, endangered, and at-risk species in terrestrial, aquatic, and marine habitats; for fine-scale and rare habitat features, as well as broader-scale natural communities; and for ecological processes that sustain the function of ecosystems. They are also meant to build on and connect existing publicly-owned conserved lands. NCCP/HCPs are designed to assemble well-functioning



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reserve networks that span ecoregional boundaries and provide landscape-level connectivity that can mediate effects of climate change.

Monitoring for Adaptive Management in Perpetuity

These federal and state laws require that approved regional conservation plans be implemented in perpetuity, with assured long-term funding, in an adaptive management framework that is science-based. This is often more difficult with non-NCCP plans, since they do not necessarily result in the robust interconnected reserve systems that NCCPs promote and that can be more readily and efficiently monitored. Adaptive management, as the term is used here, includes opportunistic learning, hypothesis testing, applying management activities as experimental treatments, focused long-term monitoring, and directing the results of analysis and assessment back into the program through decision makers.

NCCP/HCPs rely on three main types of monitoring: 1) implementation (compliance) monitoring, 2) effectiveness monitoring, and 3) targeted studies. *Implementation monitoring* tracks the status of plan implementation, ensuring that conservation actions (for example, preservation of X number of acres) are executed (is the plan being implemented as promised?). *Effectiveness monitoring* evaluates the success of the plan in achieving its stated biological goals of benefiting species, natural communities, and ecosystems. *Targeted studies* is a special subset of effectiveness monitoring. *Targeted studies* increase our knowledge about the ecological system and about management techniques, and may be either short-term or long-term.

Progress in Measuring Success of NCCP/HCPs

Monitoring programs for NCCP/HCPs face special design challenges, including: 1) they need to monitor covered species *and* ecosystem integrity, 2) they need to coordinate and integrate monitoring across multiple geographic scales ranging from individual reserves to planning areas to ecoregions, 3) uncertainty is acknowledged, hence it is incumbent on plans to reduce critical knowledge gaps, 4) monitoring should be data-driven and built in phases, involving inventories, monitoring protocol testing and resolving management uncertainties, and then implementation of long-term monitoring, and 5) they need to allow for staged implementation of monitoring as reserve lands are acquired gradually and become accessible. In addition, monitoring efforts must be prioritized, protocols developed, conceptual models described, biological goals and objectives fine-tuned and quantified, and monitoring partners must be trained in all aspects of the program. This is no small feat.

To begin to approach these challenges, a partnership was formed among US Geological Survey (USGS), California Department of Fish and Game (CDFG), and US Fish and Wildlife Service (USFWS) to produce a guidance document



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authored by Atkinson and others in 2004, entitled "Designing monitoring programs in an adaptive management context for regional multiple species conservation plans." A copy can be accessed online at <http://www.dfg.ca.gov/habcon/nccp/pubs/monframewk10-04.pdf>.

Are California NCCP/HCPs Successful?

The investment of significant California resources in landscape-level conservation plans is based on the fundamental assumption that natural resources are better off when conservation is integrated into land use and infrastructure planning. This assertion, along with the question of whether regional conservation plans are successful, is very difficult to evaluate. However, there are compelling reasons to believe this assumption is true, even when data are lacking. California conservation plans utilize the best available scientific information as a foundation and base their long-term conservation strategies, including reserve design, on the basic tenets of conservation biology. For these and other reasons, regional multi-species conservation plans in California are assumed to provide tangible long-term benefits for conservation of species and biodiversity.

Emerging Monitoring Results: Covered Species Are Stable or Increasing

Five large landscape-scale NCCP/HCPs have been adopted in southern California, and each is currently implementing its own effectiveness monitoring program. The plans include:

- Central/Coastal Orange County NCCP/HCP (approved in 1996)
- San Diego Multiple Species Conservation Program HCP/NCCP (1997)
- San Diego Multiple Habitat Conservation Program HCP/NCCP (2003)
- Western Riverside County Multiple Species HCP/NCCP (approved 2003)
- Coachella Valley Multiple Species HCP/NCCP (approved in 2008)

Details about these and other NCCP/HCPs can be found online at <http://www.dfg.ca.gov/habcon/nccp/>. In addition, several approved multi-species non-NCCP HCPs are being implemented in other parts of the state. We are learning important lessons from all of these efforts. Most approved plans are still in their monitoring infancy. Nevertheless, for some covered species, status and trends are becoming clearer, and we are learning how to monitor adaptively, through using conceptual models and new field protocols.

Recent results from key species monitoring in several long-established NCCP/HCPs indicate that, for the most part, covered species populations are stable or have been increasing since reserve assembly and initiation of conservation and management activities. In the few cases in which we have detected population declines, the causes are human-induced (arson fires; invasive species), and the implementing entities are taking adaptive management actions to reverse the trends.



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Example of an Integrated Program Designed to Measure Success of NCCP/HCPs

The San Diego region is renowned for its rich natural resources and is one of 25 global hotspots for biodiversity and species endangerment. The San Diego region is also at the forefront of habitat conservation, with multiple large-scale conservation programs being implemented as part of the local, state, and federal partnerships established under California's Natural Community Conservation Planning (NCCP) Act. As a result of these conservation efforts in San Diego County, nearly 500,000 acres of habitat will be acquired, adaptively managed, and monitored during this century and beyond. To some this would be a daunting task, but to the diverse array of stakeholders (local agencies, environmental groups, developers, and NGOs) in San Diego County, it is just another step in integrating conservation of species and habitats into the landscape, just as is done with planning for future transportation facilities. Many of the same principles apply, including 1) monitoring to determine how species and habitats are functioning and 2) adaptive management to help ensure the continued persistence of species and habitats, as anticipated in the plans.

To this end, the San Diego region, through the San Diego Association of Governments (SANDAG), has created the San Diego Management and Monitoring Program (SDMMP). The current three-person team (Program Director, Management Coordinator, and Monitoring Coordinator) works with the region's stakeholders and reserve managers to develop and implement coordinated monitoring efforts that assess the performance of the reserves in meeting established conservation goals. The team also identifies and implements adaptive management actions to maintain or improve the conditions of the reserves for hundreds of different species and natural communities. New local funding of over \$4 million annually is utilized to implement the regional monitoring program and to implement reserve management actions in a coordinated manner. This funding is in addition to the funding for management and monitoring provided by each of the implementing entities. Data are collected and analyzed to help improve how future management actions are designed and implemented. This model for locally-funded adaptive management and monitoring will set the standard for many years and many conservation plans to come.

Bay Delta Conservation Plan as a Comprehensive NCCP/HCP

The Bay Delta Conservation Plan (BDCP) is rapidly progressing as an integrated aquatic and terrestrial conservation plan for the Legal Delta (possibly including Suisun Marsh and portions of the Yolo Bypass just outside the bounds of the Legal Delta). 59 species are proposed to be covered by the plan. BDCP is unusual in that its proposed footprint overlaps, to some extent, five existing conservation plans in various stages of development. These plans include the Solano HCP, Yolo Natural Heritage Program NCCP/HCP, East Contra Costa



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County NCCP/HCP, South Sacramento HCP, and San Joaquin County MSCP HCP.

CDFG (and USFWS) has the following expectations of BDCP as an NCCP/HCP:

- BDCP will stand alone as a comprehensive NCCP/HCP (landscape-level conservation plan).
- BDCP will explicitly define clear conservation goals and measurable objectives at multiple scales, including ecosystem, natural community, habitat, and species, including ecological processes.
- BDCP will conserve representative natural communities as well as other habitats of value to wildlife within the planning area.
- BDCP will consider the regional context in which its conservation strategy and implementation program are developed, to ensure that in addition to achieving its own goals, it will contribute to the goals of surrounding and underlying conservation plans.
- BDCP will attract significant public funding, which will contribute to a broad-scale conservation component of the NCCP beyond mitigation.
- BDCP will serve as a means to unify conservation of native species and natural communities within and surrounding the Delta.
- BDCP will build upon, and not conflict with, conservation/mitigation strategies, including land acquisition, reserve network assembly, and habitat restoration of neighboring and overlapped plans.

Draft Letter Providing “Responsible Agency” Scoping Comments

Requested Action: Approve draft letter, with revisions as appropriate, and direct Interim Executive Officer to finalize and send to DWR as soon as practicable.

Recommendation

Adopt and direct transmittal of recommended draft letter.

Background

The Council has been designated in its enabling legislation (the Sacramento-San Joaquin Delta Reform Act of 2009) as a “responsible agency” under the California Environmental Quality Act (CEQA) in the development of the Bay-Delta Conservation Plan (BDCP) Environmental Impact Report.

At its May meeting, the Council received background presentations on the BDCP (the purpose of which is to provide for the conservation of threatened and endangered fish species in the Delta and to improve the reliability of the water supply system within a stable regulatory framework), as well as a memorandum from the Attorney General’s Office outlining the Council’s responsible agency role regarding BDCP.

As was mentioned, under CEQA, the Department of Water Resources (DWR) is the “lead agency” for preparation of the BDCP EIR. A lead agency is the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. A responsible agency, by contrast, is a public agency, other than the lead agency, which has responsibility for carrying out or approving a project. As was pointed out in the AG’s memo, the Council is a unique, statutorily designated responsible agency that does not necessarily have the kind of direct approval authority over the project in question (here, the BDCP itself) that is typically the case for responsible agencies under CEQA. Rather than directly approving the BDCP, the Council hears appeals challenging, among other things, Department of Fish and Game’s determination that BDCP has met the requirements of the Delta Reform Act (including satisfactorily addressing specified CEQA criteria).

Typically, when the CEQA review process starts, the lead agency is required to send a notice of preparation of the EIR to each responsible agency, which in turn may prepare and submit to the lead agency comments identifying significant environmental issues that the responsible agency will need to have explored in the EIR.

In this case, DWR issued a revised notice of preparation for the BDCP EIR on February 13, 2009, but did not send a notice to the Council because the Council was not then in existence. The formal scoping comment period closed in March 2009. The BDCP anticipates releasing a draft plan in November 2010, and a draft EIR on that draft plan sometime in Spring 2011.

Now that the Council has been established and statutorily designated a responsible agency for BDCP, however, it is appropriate to provide scoping comments to DWR to ensure that relevant issues of concern to the Council, with particular focus on the CEQA criteria in the Delta Reform Act, are adequately addressed in the draft EIR.

At its May meeting, the Council directed staff to prepare a draft letter to DWR providing responsible agency scoping comments. A copy of the draft is attached. Given the unique nature of the Council's role in the BDCP process, DWR has agreed that it will accept and consider the Council's comments without the need to reopen the formal scoping comment period.

List of Attachments

Attachment 1 – Draft Letter

Attachment 2 – Notice of Preparation

Attachment 3 - Federal Agencies White Paper on Application of the 5-point Policy to the BDCP

Contact

Chris Stevens
Chief Counsel

Phone: (916) 445-0441

[DRAFT 6/14/2010]
[DELTA STEWARDSHIP COUNCIL LETTERHEAD]

Mr. Mark Cowin
Director
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Subject: Scoping Comments on February 13, 2009 Revised Notice of Preparation of a Draft Environmental Impact Report and Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Director Cowin:

This letter provides scoping comments to the California Department of Water Resources (DWR) on its February 13, 2009 Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/S) for the Bay Delta Conservation Plan (Revised NOP).

Background

The Delta Stewardship Council (Council) was established, effective February 3, 2010, by SB X7 1 (see the Sacramento-San Joaquin Delta Reform Act of 2009, new Water Code Div.35 (commencing with Section 85000) (the Delta Reform Act)). The Council's primary duty is to prepare, adopt, and commence implementation, by January 1, 2012, of a comprehensive resources management plan for the Delta that furthers the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem (to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place). This resources management plan is referred to as the Delta Plan (see Water Code Section 85300 et seq.).

The Delta Plan will include various components described in the Delta Reform Act, including the BDCP, if it meets certain specified conditions. It may also incorporate other completed Delta-related plans to the extent that the other plans promote the co-equal goals.

The Council has been designated in the Delta Reform Act as a responsible agency under the California Environmental Quality Act (CEQA) in the development of the BDCP EIR/S (see Water Code Section 85320(c)). Although the Council was not in existence at the time DWR issued the Revised NOP, it is providing the following scoping comments on the Revised NOP pursuant to its statutory duty as a responsible agency, consistent with relevant CEQA guidelines (see 14 CCR secs. 15082(b), 15083, and 15086). Given its unique role in the BDCP process, the Council greatly appreciates DWR agreeing to

accept and consider these comments, without the need to reopen the formal comment period on the Revised NOP.

As you know, the Council is in the process of hiring independent consultants to advise it in its role as a responsible agency relative to BDCP, and in its potential appellate role (see Water code sec. 85320(e)), should any person appeal a Department of Fish and Game determination that the BDCP has met the statutory requirements set out in Water Code section 85320(b).

This letter outlines preliminary comments and issues identified by the Council. Future letters will contain more detailed comments and discussion of relevant points.

A. Project Purpose and Need

*** BDCP Must Further the Co-Equal Goals to Satisfactorily Address the Statutory Criteria for CEQA Review.**

The Delta Reform Act makes the co-equal goals the cornerstone of water policy in the Delta. The co-equal goals are the foundational principles underlying and harmonizing all provisions of the Delta Reform Act, including the comprehensive nature of the criteria for CEQA review applicable to the BDCP EIR. Consequently, in order to satisfactorily address the criteria for CEQA review, the co-equal goals must be prominently reflected in the fundamental structure of the BDCP and corresponding EIR.

*** The Project Purpose and Range of Reasonable Alternatives Analyzed in the BDCP EIR Must Reflect the Co-Equal Goals.**

The Revised NOP includes as a “Purpose and Project Objective,” to “restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.” The Delta Reform Act, however, provides, among all the other provisions intended to collectively further the co-equal goals, that the policy of the State is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency (see Water Code sec. 85021). *The Council believes that, in order to satisfactorily address the statutory criteria for CEQA review, the BDCP must address this State policy of “reduced reliance on the Delta”, in the project purpose and objective, and corresponding range of reasonable alternatives (including conveyance and capacity options) to review and analyze in the EIR.*

B. Alternatives

*** The BDCP EIR must satisfactorily address the criteria for CEQA review specified in the Delta Reform Act**

The Delta Reform Act requires that, for the BDCP to be considered for inclusion in the Delta Plan (and for the public benefits associated with the BDCP to be eligible for state funding) the CEQA EIR must include a “comprehensive review and analysis of” seven specifically described items concerning flow and other operational criteria, conveyance alternatives, climate change, fish and aquatic resources, flood management, natural disasters, and Delta water quality (see Water Code sec. 85320(b)(2)).

These statutory criteria for CEQA review must be satisfactorily addressed, even though the Revised NOP (which obviously predated the Delta Reform Act) does not include this language.

C. Mitigation/Conservation Measures

*** Projects Included in the BDCP to Further the Co-Equal Goals Must be Implemented in a Balanced Manner.**

The Council believes that inherent in the co-equal goals is the concept that projects to improve water supply reliability and ecosystem restoration must move ahead in a concurrent, comparable, and fully-funded manner. The Council would expect to see this vitally-important concept clearly reflected in a firm schedule that specifies the nature and timing of implementation of all plan components (and shows how they relate to one another) and the commitments for long-term funding adequate to implement each of those components.

*** BDCP Must Be Structured as a Robust, Natural Community Conservation Plan (and Habitat Conservation Plan).**

The Revised NOP provides that one of the goals of the BDCP is to obtain an incidental take permit under either Fish and Game Code section 2081 (normal state endangered species process) or the Natural Community Conservation Planning Act (NCCPA)(commonly referred to as the “gold standard” of species and habitat conservation planning). The Delta Reform Act, however, is clear that BDCP must meet the NCCPA to be included in the Delta Plan and be eligible to receive public funds for associated public benefits (see Water Code sec. 85320(b)(1)).

To successfully structure BDCP as an NCCP and a federal HCP—which will obviously affect the nature and scope of the CEQA review-- the Council recommends that BDCP consider incorporating the principles outlined by the federal agencies in their “White Paper on Application of the 5-point Policy to the Bay-Delta Conservation Plan, April 29, 2010”; namely, that the plan include clearly defined and scientifically supported biological goals and objectives, an adaptive management plan that tests alternative strategies for meeting those biological goals and objectives, and a framework for adjusting future conservation actions, if necessary, based on what is learned.

This is consistent with the provision contained in the Delta Reform Act, which requires the BDCP to “include a transparent, real-time operational decisionmaking process in which fishery agencies ensure that applicable biological performance measures are achieved in a timely manner with respect to water system operations.”(Water Code sec.85321).

*** BDCP Must Take into Account the Flow Criteria and Quantifiable Biological Objectives Developed by the State Water Board and/or Department of Fish and Game.**

The Delta Reform Act requires the State Water Resources Control Board (State Water Board), for the purpose of informing planning decisions for the Delta Plan and the BDCP, to develop by August 2010, pursuant to its public trust obligations, new flow criteria for the Delta ecosystem necessary to protect public trust resources. [This is consistent with Water Code sec. 85023, also contained in the Delta Reform Act, which reiterates the foundational importance of the public trust doctrine to water management policy, with particular importance and applicability to the Delta.] The flow criteria are subject to change over time based on science-based adaptive management. Any order approving a change in the point of diversion relating to alternative conveyance must include appropriate Delta flow criteria and must be informed by the flow criteria developed by the State Water Board pursuant to the Delta Reform Act (see Water Code section 85086(c)).

Similarly, but in addition to the above requirement, the Delta Reform Act requires the Department of Fish and Game (in consultation with federal fisheries agencies) to develop and recommend to the State Water Board, Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta (see Water Code section 85084.5).

Although these flow criteria and biological objectives, by themselves, will not have any regulatory or adjudicative effect, they will be extremely valuable tools in ultimately determining operational requirements, flows, and adaptive management strategies necessary for ecosystem and fisheries recovery, as well as identifying remaining water available for export and other beneficial uses.

The Council therefore believes that to satisfactorily address the criteria for CEQA review, the BDCP must take into account the flow criteria and quantifiable biological objectives developed by the State Water Board and/or Department of Fish and Game. This would include taking into account any subsequent or follow-up recommendations made by those agencies on a timely basis prior to final approval of the BDCP and issuance of the CEQA Notice of Determination.

D. Overall Sufficiency

*** BDCP Must Include Independent Scientific Review at Several Key, Up-Coming Stages.**

The NCCPA requires the inclusion of independent scientific input in the development of an NCCP, like the BDCP (see Fish and Game Code secs. 2820(a)(1) and 2810(b)(5)). In addition, the Delta Reform Act requires DWR to consult with the Delta Independent Science Board during the development of the BDCP (see Water Code sec.85320(c)).

The Council strongly believes—as is reflected in these statutory provisions-- that independent scientific review is critical to the success of a conservation planning effort as complex and monumentally important as the BDCP. It will be especially important, in the Council's view, at certain key, upcoming stages of the BDCP (and critical to whether BDCP ultimately complies with the CEQA review criteria). In particular, the Council recommends that BDCP engage the Interagency Ecological Program to provide independent scientific review and input on the "Effects Analysis" due for public release in the next several months. In addition, BDCP should engage the National Academy of Sciences to review and prepare a letter report on the draft plan due for public release in November 2010. Both of these reviews would add considerable value to the process and help to ensure that the tough decisions BDCP needs to make in the immediate future are not delayed and are based upon the best available science.

The Council appreciates the opportunity to provide these scoping comments in its role as a responsible agency pursuant to CEQA, as required by the Delta Reform Act. Kindly note that the Council staff stands ready to assist DWR and other BDCP participants in a "consultative" role pursuant to Water Code section 85320(c).

Sincerely,

Joe Grindstaff
Interim EO

Notice of Preparation

To: State Clearing House, Governor's Office of Planning and Research

P.O. Box 3044

Sacramento, CA 95812-3044

From: California Department of Water Resources

901 P. Street, Bonderson BLDG, 4th Floor, PO Box 942836

Sacramento, CA 95814

Subject: Notice of Preparation of a Draft Environmental Impact Report

Department of Water Resources will be the Lead Agency and will prepare an environmental impact report for the project identified below. We need to know the views of your agency as to the scope and content of the environmental information which is germane to your agency's statutory responsibilities in connection with the proposed project. Your agency will need to use the EIR prepared by our agency when considering your permit or other approval for the project.

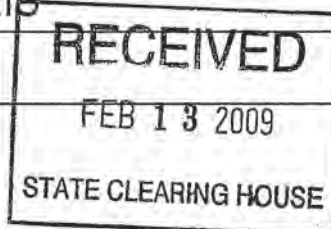
The project description, location, and the potential environmental effects are contained in the attached materials. A copy of the Initial Study (☐ is ☒ is not) attached.

Due to the time limits mandated by State law, your response must be sent at the earliest possible date but not later than 30 days after receipt of this notice.

Please send your response to Delores Brown, Division of Environmental Services at the address shown above. We will need the name for a contact person in your agency.

Project Title: Bay Delta Conservation Plan EIR/EIS

Project Applicant, if any: _____



Date 2/13/09

Signature Barbara McDonnell

Title Chief, Division of Environmental Services

Telephone 916-376-9700

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

DEPARTMENT OF WATER RESOURCES

DIVISION OF ENVIRONMENTAL SERVICES
3500 INDUSTRIAL BOULEVARD
WEST SACRAMENTO, CA 95691



REVISED NOTICE OF PREPARATION

**REVISED NOTICE OF PREPARATION OF ENVIRONMENTAL IMPACT REPORT AND
ENVIRONMENTAL IMPACT STATEMENT FOR THE
BAY DELTA CONSERVATION PLAN**

(State Clearinghouse Number: 2008032062)

February 13, 2009

INTRODUCTION

Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Department of Water Resources (Department), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and the U.S. Bureau of Reclamation (Reclamation) will initiate the preparation of a joint Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta, California.

The Department is the lead agency under CEQA, Reclamation is the lead agency under NEPA for the proposed BDCP, and NMFS and USFWS are co-lead agencies under NEPA. The Federal co-lead agencies have requested that the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) participate in the EIR/EIS as cooperating agencies for the purposes of compliance with their regulatory programs, including the Clean Water Act. EPA and the Corps have agreed to participate.

The BDCP is being prepared through a collaboration of state, federal, and local agencies pursuant to authority provided in: (1) Section 10(a)(1)(B) of the Federal Endangered Species Act (ESA) of 1973, as amended, and (2) the Natural Community Conservation Planning Act (NCCPA), California Fish and Game Code, Section 2800 et. seq. or Section 2081 of the California Endangered Species Act (CESA), California Fish and Game Code 2050 et. seq. The BDCP process may provide the basis for the Department to apply for incidental take permits (ITP) pursuant to Section 10 of the Federal Endangered Species Act and California Fish and Game Code Section 2835, while Reclamation will obtain Biological Opinions and incidental take statements (ITS) pursuant to Section 7 of the Federal Endangered Species Act. These incidental take authorizations will allow the incidental take of threatened and endangered species resulting from certain covered activities and conservation measures associated with water operations of the California State Water Project (SWP), as operated by the Department, and the federal Central Valley Project (CVP), as operated by Reclamation. Such measures will be identified through the planning process.

BACKGROUND INFORMATION

The Department and Reclamation, along with the Metropolitan Water District of Southern California (MWD), the Kern County Water Agency (KCWA), the Santa Clara Water District (SCVWD), Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7), the San Luis and Delta Mendota Water Authority (SLDMWA), the Westlands Water District (WWD), and Mirant Delta (known collectively as the "Potentially Regulated Entities" or PREs), are preparing the BDCP for their covered activities within the Geographic Scope described below. It is the goal of the PREs that the BDCP follow a process that meets:

1. The requirements of Section 10(a)(1)(B) of the ESA for non-federal PREs and result in the issuance of ITPs from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (collectively the Services) to certain of the PREs;
2. The requirements of an ITP under the California fish and wildlife protection laws, either pursuant to the NCCPA, Section 2835 and/or Section 2081 of the Fish and Game Code; and
3. The requirements of Section 7 of the ESA related to consultation with other federal agencies, resulting in the issuance of Biological Opinions, including ITSs, from the NMFS and or USFWS on specific activities of certain members of the PREs.

Since the first set of scoping meetings that occurred from April 28th, 2008 to May 14th, 2008, the planning efforts for the BDCP have advanced. All comments from the first set of scoping meetings will be taken into consideration for the development of the EIR/EIS. A preliminary scoping report has been completed; all comments from the first set of scoping meetings are available online (<http://www.water.ca.gov/deltainit/comments.cfm>). The BDCP has also released a document entitled, "Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan" which is also available online (http://resources.ca.gov/bdcp/docs/12.19.08_HO_BDCP-Overview_of_Conservation_Strategy_With_Core_Elements.pdf). Formal preparation of the draft EIR/EIS is commencing and is incorporating all necessary information as it is created in connection with, and as part of the BDCP process. The BDCP process is continuing with the cooperation of the Services, the California Resources Agency, California Department of Fish and Game (CDFG), the PREs, including Mirant Delta, and various stakeholders, including the Nature Conservancy, Environmental Defense, Defenders of Wildlife, the California Farm Bureau, the Natural Heritage Institute, The Bay Institute, Contra Costa Water District, and American Rivers. All of these organizations are participants in the Steering Committee and guide the preparation of the BDCP. Friant Water Authority and the North Delta Water Agency became Steering committed members on October 17, 2008. The Services and CDFG are participating in the Steering Committee's efforts in an ex-officio basis, providing technical input and guidance in support of the Steering Committee's efforts. CDFG will be a responsible agency under CEQA for this EIR/EIS process. The participants are undertaking these planning efforts pursuant to: (1) the Planning Agreement that was signed October 2006 and amended April 2007 to guide the BDCP process; and (2) the Points of Agreement dated November 2007 (see Resources Agency website, <http://resources.ca.gov/bdcp/> for Planning Agreement). This website <http://www.water.ca.gov/deltainit/bdcp.cfm> provides open access to comprehensive documentation of the planning process, and a detailed schedule of past and future planning activities.

PROJECT DESCRIPTION

Purpose and Project Objectives

The purpose and project objectives of the proposed actions are to achieve the following:

To be granted incidental take permits for the covered species that authorize take related to:

1. The operation of existing State Water Project Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing State Water Project (SWP) and Federal Central Valley Project (CVP) pumping plants located in the southern Delta;
2. The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at §10(a)(1)(B) and its implementing regulations and policies;
3. The diversion and discharge of water by Mirant LLC for power generation in the Western Delta.

To improve the ecosystem of the Delta by:

1. Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species; and
2. Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.
3. Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP;

Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements.

Need

The Delta is currently a conduit for water that is used for a wide range of in-stream, riparian and other beneficial uses, including drinking water for over 25 million Californians and irrigation water for agricultural lands in the Delta and the San Joaquin Valley. While some beneficial water users depend on the Delta for only a portion of their water needs, others are highly dependent on supplies from the Delta. While overall water supplies have remained finite, conflicts have arisen and intensified among Delta Water users as total demands have increased for various users and regulatory requirements for rare, threatened or endangered species have also increased. With the forecast of reduced precipitation in the Sacramento and San Joaquin valley watersheds, the struggle to meet these demands will be magnified.

The recent regulatory requirements to protect Delta smelt and longfin smelt have taken a more

ecosystem approach to minimizing effects of water project operations than past regulatory requirements. These requirements affect the timing of flow restrictions associated with meeting the habitat requirements for threatened and endangered species. There exists a need to protect and recover these species in order to reduce conflicts and provide for healthy ecosystems.

The levees in the Delta are at risk of failure from a number of causes, including seismic activity and sea level rise associated with global climate change. The ability of the Department and Reclamation to export water from the Delta would be compromised should one or more of these levees fail. Such levee failure would result in an interruption of water supply for both urban and agricultural uses. Another impact of levee failure would be severe degradation of water quality in the Delta with potential adverse impacts upon the aquatic ecosystem. Improvements to the conveyance system are needed to respond to these increased demands upon water supply reliability, water quality, and the aquatic ecosystem. Improvements to the conveyance system will also respond to risks on water supply reliability due to a levee failure.

The EIR/EIS will analyze a reasonable range of alternatives developed to address the purposes identified above.

Covered Activities

The BDCP covered activities may include, but are not limited to:

1. Existing Delta conveyance elements and operations of the CVP and SWP;
2. New Delta conveyance facilities (including power line alignments) and operations of the CVP and SWP generally described in the BDCP November 2007 Points of Agreement (<http://resources.ca.gov/bdcp/>);
3. Operational activities, including emergency preparedness of the CVP and SWP in the Delta;
4. Operational activities in the Delta related to water transfers involving water contractors or to serve environmental programs;
5. Maintenance of the CVP, SWP, and other facilities in the Delta;
6. Facility improvements of the CVP and SWP within the Statutory Delta (California Water Code Section 12220);
7. Ongoing operation of and recurrent and future projects related to other Delta water users, as defined by the BDCP Planning Agreement (<http://resources.ca.gov/bdcp/>);
8. Projects designed to improve Delta salinity conditions; and
9. Conservation measures included in the BDCP, including, but not limited to, fishery related habitat restoration projects, adaptive management, and monitoring activities in the Delta.

Covered Species

Species proposed for coverage in the BDCP are species that are currently listed as Federal or State threatened or endangered or have the potential to become listed during the life of the BDCP and have some likelihood to occur within the project area. The covered species that are the initial focus of the BDCP include certain aquatic species such as:

1. Central Valley steelhead *Oncorhynchus mykiss*;

2. Central Valley Chinook salmon *Oncorhynchus tshawytscha* (spring-run and fall/late fall-runs);
3. Sacramento River Chinook salmon *Oncorhynchus tshawytscha* (winter-run);
4. Delta smelt *Hypomesus transpacificus*;
5. Green sturgeon *Acipenser medirostris*;
6. White sturgeon *Acipenser transmontanus*;
7. Splittail *Pogonichthys macrolepidotus*; and
8. Longfin smelt *Spirinchus thaleichthys*.

Other species that will be considered for inclusion in the BDCP include, but may not be limited to:

1. Swainson's hawk *Buteo swainsoni*;
2. Bank swallow *Riparia riparia*;
3. Giant garter snake *Thamnophis gigas*; and
4. Valley elderberry longhorn beetle *Desmocerus californicus dimorphus*.

This list identifies the species that will be evaluated for inclusion in the BDCP as proposed covered species, but the list may change as the planning process progresses. The participants anticipate that species may be added or removed from the list once more is learned about the nature of the covered activities and the impact of covered activities on native species within the planning area.

Planning Goals

The BDCP will include goals and objectives for the management of Covered Activities and conservation of Covered Species. As proposed in the Planning Agreement, the planning goals include:

1. Provide for the conservation and management of covered species within the planning area;
2. Preserve, restore, and enhance aquatic, riparian, and associated terrestrial natural communities and ecosystems that support covered species within the planning area through conservation partnerships;
3. Allow for projects that restore and protect water supply, water quality, and ecosystem health to proceed within a stable regulatory framework;
4. Provide a means to implement covered activities in a manner that complies with applicable State and federal fish and wildlife protection laws, including the NCCPA or CESA, FESA, and other environmental laws, including CEQA and NEPA;
5. Provide a basis for permits necessary to lawfully take covered species;
6. Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for covered activities within the planning area;
7. Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
8. Provide clear expectations and regulatory assurances regarding covered activities occurring within the planning area.

PROJECT AREA

The planning area for the BDCP will consist of the aquatic ecosystems and natural communities, and potentially adjacent riparian and floodplain natural communities, within the Statutory Delta (California Water Code Section 12220). The Statutory Delta includes parts of Yolo, Solano, Contra Costa, San Joaquin, and Sacramento counties. However, it may be necessary for the BDCP to include conservation actions outside of the Statutory Delta that advance the goals and objectives of the BDCP within the Delta, including as appropriate, conservation actions in the Suisun Marsh, Suisun Bay, and areas upstream of the Delta (Figure 1). Any conservation actions outside the Statutory Delta would be implemented pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others. The EIR/EIS project area for which impacts are evaluated may be different than the BDCP geographic scope.

ENVIRONMENTAL BASELINE

CEQA Guidelines Section 15125 states that an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation (NOP) is published, or if no Notice of Preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant. Normally, the environmental baseline is the same as existing conditions.

Alternatives

The BDCP will likely consist of three major elements: 1) actions to improve ecological productivity and sustainability in the Delta; 2) potential capital improvements to the water conveyance system; and 3) potential changes in Delta-wide operational parameters of the CVP and SWP associated with improved water conveyance facilities.

Potential habitat restoration measures that could improve ecological productivity and sustainability in the Delta may involve the creation and/or restoration of floodplain; freshwater intertidal marsh; brackish intertidal marsh; channel margin; and riparian habitats. Floodplain restoration opportunities exist in the North Delta/Yolo Bypass and upper San Joaquin River areas; and intertidal marsh restoration opportunities exist throughout the Delta and in Suisun Marsh. Channel margin habitat restoration opportunities exist for improving habitat corridors and as a component of floodplain restoration. Riparian habitat restoration opportunities exist as a component of floodplain, freshwater intertidal marsh, and channel margin habitat restoration.

Three general alternatives are being considered as they relate to the potential changes in the water conveyance system and CVP and SWP operations. These include: 1) a through Delta alternative; 2) a dual conveyance alternative; and 3) an isolated facility alternative. The dual conveyance alternative may include use of existing points of diversion during some circumstances and potential new points of diversion at various locations in the North Delta, as well as facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta. The fully isolated facility alternative would include

Legal Delta Boundary

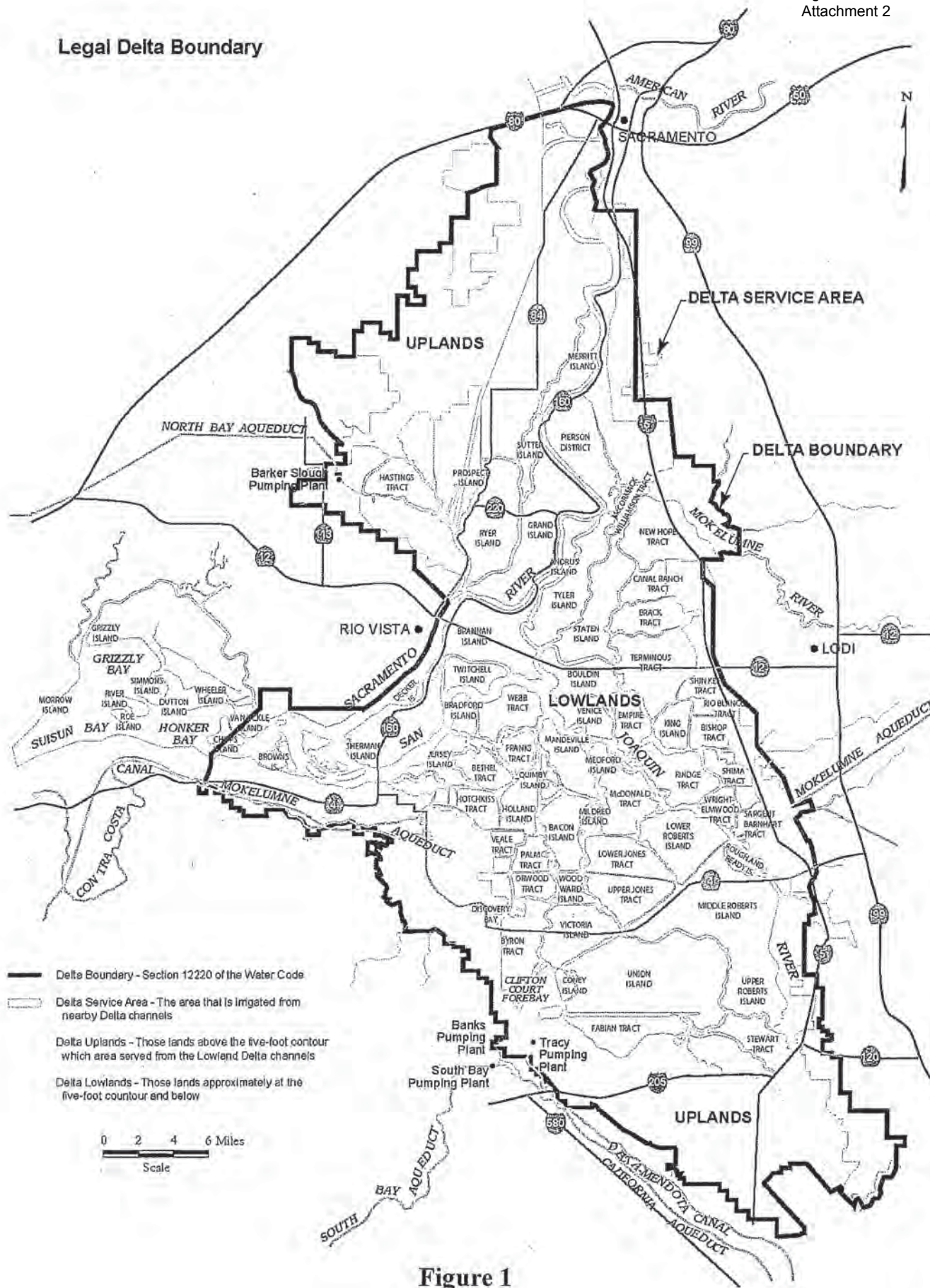


Figure 1

potential new points of diversion at various locations in the North Delta and facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta. The improved through-Delta alternative could include new temporary or permanent barriers to modify existing hydraulics or fish movement within the Delta, armoring of levees along Delta waterways to ensure continued conveyance capacity, and/or actions to improve conveyance capacity in existing Delta waterways.

New points of diversion could be located along the Sacramento River between South Sacramento and Walnut Grove. The new conveyance facility could extend from the new points of diversion to the existing SWP and CVP pumping facilities in the South Delta and be located either to the west or east of the Sacramento River. Potential CVP/SWP operations changes include the seasonal, daily, and real time amounts, rates, and timing of water diverted through and/or around the Delta. Potential corresponding changes to water exports could also be developed.

Other actions to reduce threats to listed fish that may be evaluated for implementation by the BDCP include measures to minimize other stressors. These other stressors may include: (1) non-native invasive species; (2) toxic contaminants; (3) other sources of impairment of water quality; (4) hatcheries; (5) harvest; (6) non-project diversions; and (7) commercial and recreational activities. Implementation of potential habitat creation and restoration activities and measures to minimize other stressors will be evaluated throughout the Delta, and possibly upstream and downstream of the Delta, as appropriate to meet the objectives of the plan.

Preliminary locations, alignments, and capacities of new conveyance facilities, as well as habitat restoration activities and actions to address other stressors, to be evaluated in the EIS/EIR will be informed by the scoping process. In addition to the potential alternatives described above, other reasonable alternatives identified through the scoping process will be considered for potential inclusion in the alternatives analysis.

POTENTIAL ENVIRONMENTAL EFFECTS

The EIR/EIS will analyze resources that could be affected by the project, including but not limited the covered species listed above, as well as:

1. Aquatic Environment
2. Potentially Affected Wetlands and Terrestrial Habitat
3. Surface and Groundwater Hydrology
4. Geology and Soils
5. Water Quality
6. Water Rights
7. Seismic Stability
8. Aesthetics
9. Air
10. Land Use
11. Historic and Cultural Resources
12. Environmental Health and Safety
13. Public Services and Utilities
14. Energy and Natural Resources

15. Effects of Climate Change Including Sea Level Rise
16. Greenhouse Gas Emissions

Potential adverse effects are likely in each category, though it is premature to determine whether or not such effects, in a particular category, will be significant for purposes of CEQA.

Subsequent comments on the Notice of Preparation, comments from the scoping meetings, and ensuing analyses will identify additional environmental impacts, if any.

SCOPING MEETINGS

The schedule for this EIR/EIS depends upon the development of the draft BDCP, which is expected to occur in early 2009. The federal Notice of Intent (NOI) for the BDCP was published in the federal Register on February 13, 2009. Joint Public Scoping meetings for the Federal NOI and this NOP are scheduled to take place at the following times and locations:

- March 9, 2009 at 6-10 pm. Chico Masonic Family Center, 1110 West East Avenue, Chico, CA 95926.
- March 10, 2009 at 6-10 pm. San Jose Marriott, Blossom Hill Room and Almaden Room, 301 South Market Street, San Jose, CA 95113.
- March 11, 2009 at 6-10 pm. Bakersfield Marriott at the Convention Center, Salon A and Hammons Room, 801 Truxtun Avenue Bakersfield, CA 93301.
- March 12, 2009 at 1-4 pm. Los Angeles Junipero Serra State Building, 320 West Fourth, Los Angeles, CA 90013.
- March 16, 2009 at 6-10 pm. San Diego Marina Village Conference Center, Captains Room and Room C8, 1936 Quivera Way San Diego, CA 92109.
- March 17, 2009 at 6-10 pm. Merced High School, 205 West Olive Avenue Merced, CA 95344.
- March 18, 2009 at 6-10 pm. Davis Veterans Center, 203 East 14th Street, Davis CA 95616.
- March 19, 2009 at 1-4 pm. Sacramento Hyatt Regency, 1209 L Street Sacramento, CA 95814.
- March 23, 2009 at 6-10 pm. Brentwood Community Multipurpose Room 730 Third Street, Brentwood CA 94513.
- March 24, 2009 at 6-10 pm. Stockton Civic Memorial Auditorium 525 North Center Street, Stockton, CA 95202.
- March 25, 2009 at 6-10 pm. Fairfield Hilton Garden Inn, Willow and Larkspur Rooms, 2200 Gateway Court, Fairfield, California 94533.
- March 26, 2009 at 6-10 pm. Clarksburg Community Church, 52910 Netherlands Avenue, Clarksburg, CA 95612.

Anyone interested in more information concerning the EIR/EIS process, or anyone who has information concerning the study or suggestions as to significant issues, should contact Delores Brown as provided below.


WRITTEN COMMENTS

This notice is being furnished to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives that will be addressed in the EIR component of the joint EIR/EIS. The primary purpose of the scoping process is to identify important issues raised by the public and affected agencies related to the issuance of ITPs for the BDCP. Written comments from interested parties are invited to ensure that the full range of issues related to the development of the BDCP and issuance of the ITPs are identified. All comment received, including names and addresses, will become part of the official administrative record and may be made available to the public. Written comments on this part of the Scoping process will be accepted until May 14, 2009.

Within 30 days after receiving the Notice of Preparation, each Responsible Agency and Trustee Agency shall provide the Lead Agency with specific detail about the scope, significant environmental issues, reasonable alternatives, and mitigation measures related to the Responsible Agency's or Trustee Agency's area of statutory responsibility that will need to be explored in the EIR/EIS. In accordance with CEQA Guidelines Section 15082(b)(1)(B), responsible and trustee agencies should indicate their respective level of responsibility for the project in their response.

Department practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their name and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosures would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. The Department will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Written comments on the scope of the EIR/EIS should be sent to Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236 or by email at BDCPcomments@water.ca.gov.


Barbara McDonnell
Chief, Division of Environmental Services
Department of Water Resources

Date

2/13/09



**Federal Agencies White Paper on Application of the 5-point Policy
To the Bay Delta Conservation Plan
April 29, 2010**

At the March 25, 2010 Steering Committee, the Delta Science Program presented their review of the “Logic Chain” approach to refining biological goals and objectives. The Services have reviewed that report and provide the following recommendations, based on that report and the Services’ “5-point Policy” for HCPs (65 Fed. Reg. 35242 (June 1, 2000)).

The Endangered Species Act (ESA) criteria for issuance of an incidental take permit (ITP) under section 10 include a finding that the incidental taking of listed species from the permittee’s activities “will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.” (16 USC § 1539(a)(2)(B)(iv)) This finding necessarily requires a judgment on the results – or outcome – of implementing the plan.

In making the required finding, NMFS and FWS must analyze the likely effects of the taking over the life of the permit, which in the case of the BDCP is 50 years. There is substantial uncertainty regarding the effects on listed species of a new water conveyance system and of water withdrawal, combined with effects of other human activities and natural phenomena that are reasonably certain to occur, over a time period as long as 50 years. This uncertainty is compounded by both the complexity of the Delta ecosystem and the predicted future increases in temperature and climate variability.

To support the required finding, therefore, the conservation plan must take into account the high degree of uncertainty of outcomes of conservation measures and provide a mechanism for adjusting measures to achieve the desired outcomes (adaptive management). An agreement to simply implement specific actions is not sufficient to support the finding unless the analysis demonstrates at the outset a reasonable likelihood that the actions will be successful.

The Services’ 5-Point Policy, an addendum to the HCP Handbook, acknowledges the need to address uncertainty in HCPs. The Policy states that HCPs should include explicit biological goals and objectives, which provide the basis for the plan’s conservation measures. 65 Fed. Reg. at 35250-51. Where there is uncertainty as to the likelihood that the conservation measures will achieve the biological goals and objectives, the plan should incorporate monitoring and adaptive management to increase the likelihood that the plan will meet its conservation goals. The Policy states that “an adaptive management strategy is essential for HCPs that would otherwise pose a significant risk to the species at the time the permit is issued due to significant data or information gaps.” 65 Fed. Reg. at 35352. Some of the data gaps and sources of uncertainty for the BDCP include the following:

- The level of actual benefits that will be realized by the covered species from the restoration of tidal marsh and floodplain habitat;
- The level of predation that might occur at the new in-river structures and the

- effect that such predation might have on listed species viability;
- The impacts to listed species and critical habitat resulting from the removal of a significant proportion of river flows directly from the Sacramento River in the north delta;
- The effectiveness of certain proposed measures to control stressors such as non-native predators, other invasive species, chemical contaminants, and wastewater runoff;
- The extent of hydrologic changes resulting from climate change; and
- The extent of added stress on anadromous fish from changes in ocean conditions, including warming and acidification.

A results-based HCP is appropriate when flexibility is needed and the permittee will retain ongoing management authority over an activity for the long term. In the 5-Point Policy, the Services distinguish between a prescription-based HCP and a results-based HCP. The Services stated:

A prescription-based HCP outlines a series of tasks that are designed to meet the biological goals and objectives. This type of HCP may be most appropriate for smaller permits where the permittee would not have an ongoing management responsibility. A results-based HCP has flexibility in its management so that the permittee may institute the actions that are necessary as long as they achieve the intended result (i.e., the biological goals and objectives), especially if they have a long-term commitment to the conservation program of the HCP. HCPs can also be a mix of the two strategies.

65 Fed. Reg. at 35351.

The BDCP is a complex, landscape scale, long-term HCP with a high degree of uncertainty as to how close the initial conservation measures will come to achieving the plan's biological goals and objectives. It falls into the category of plans that will be a mixture of the two strategies, with initial prescriptions associated with adaptive management, and specific biological outcomes defining the ultimate success of the plan. This type of plan will allow management flexibility so the permittee may institute actions necessary to achieve the plan's goals while providing boundaries for future expectations and commitments. In addition, a results-based plan will address uncertainty in the ecosystem and provide the conservation assurances required by the Act. The Services will be challenged to make the findings required for permit issuance if the plan does not include clearly defined and scientifically supported biological goals and objectives, an adaptive management plan that tests alternative strategies for meeting those biological goals and objectives, and a framework for adjusting future conservation actions, if necessary, based on what is learned.

The recent Delta Science Program's review of the proposed "Logic Chain" process provides excellent insight and recommendations for developing program goals and objectives. The science panel found that the logic chain approach (with a few recommended revisions) should continue to be developed and applied, in order

to clearly articulate and link goals, objectives, actions, and outcomes. (See attached diagram illustrating the Logic Chain approach.) We urge you to incorporate the recommendations from the Delta Science Program review into the process to develop biological goals and objectives for the BDCP. Completing the logic chain process by following the guidance and recommendations of the science panel is essential to developing a plan that will include the necessary elements for permit issuance, and more importantly, one that will be successful.

THE LOGIC CHAIN AND ITS USES IN THE BAY DELTA CONSERVATION PLANNING PROCESS User's Guide – Draft April 14, 2010

BACKGROUND AND NEED

The Bay Delta Conservation Plan (BDCP) is intended to increase water supply reliability for contractors of the State and federal water projects, while simultaneously contributing to the recovery of threatened, endangered, and imperiled (“covered”) species that occur in the Sacramento-San Joaquin Delta. The process of developing and implementing such a plan is extremely complex. Restoration planning is complicated by the number and diversity of covered species¹, the physical complexity of the Delta, and uncertainty about the nature and strength of cause-effect relationships operating in this ecosystem. Furthermore, the ecosystem is changing in ways that are relatively well understood (e.g. sea level rise), incompletely understood (e.g. pelagic organism decline), and those that are unknown. Measures designed to facilitate BDCP's dual goals have been, and continue to be, developed and described.

The Logic Chain architecture captures the underlying rationale and assumptions for the conservation measures that comprise BDCP's conservation strategy (“the plan”) and establishes benchmarks against which progress can be measured. This approach is intended to increase specificity and clarity regarding: goals and objectives for recovery of covered species; BDCP's contribution to recovery; the assumptions underlying restoration approaches; and the conservation measures and their projected outcomes. Increased clarity and specificity in these components of the Logic Chain will improve our understanding of the data collection, analysis, synthesis, and evaluation processes that enable adaptive management. By articulating what the plan is trying to accomplish and how it intends to achieve its objectives, the Logic Chain architecture facilitates evaluation of the initial plan and assessment of its efficacy during implementation. The Logic Chain sets a context within which adaptive management is applied to achieve BDCP's goals of species restoration and improved water supply reliability.

THE LOGIC CHAIN – HOW IT WORKS

By capturing the answers to a set of standard questions, the Logic Chain architecture provides a means for explaining the challenges facing covered species and how BDCP intends to address those challenges. These questions and their position within the Logic Chain are described below. *The Logic Chain is not designed to identify BDCP legal obligations (e.g. as spelled out in permit terms); rather, it forms the basis from which those terms and obligations will be negotiated.* As our knowledge base grows (through initial evaluation and subsequent implementation of the plan and as a result of ongoing research) the “answers” to these questions will become more specific and accurate, allowing increased efficiency and efficacy in allocation of conservation effort.

LOGIC CHAIN QUESTIONS AND ASSOCIATED TERMINOLOGY

Below are examples of the questions that drive various levels of the Logic Chain. Each question calls for a particular type of information; labels for these Logic Chain components are indicated with underlining and italics and also appear on the attached schematic diagram. Where possible, hypothetical examples illustrate the type of information required at each level of the architecture.

¹ Twelve “covered” species are identified including: four distinct populations of Chinook salmon, steelhead, two smelt species, two sturgeon species, two lamprey species, and one species of minnow.

What's the problem? Numerous fish species in the Sacramento-San Joaquin Delta ecosystem are officially endangered or otherwise imperiled; collectively, they reflect a decline in various ecosystem functions. Ecosystem processes (such as flooding, primary and secondary productivity, sediment production) have been radically altered in this ecosystem. Problem statements provide a concise declaration of the various ecological issues that the BDCP is trying to address. Problem statements are general and objective descriptions of the problem(s) and do not assume particular drivers of, or solutions to, those problems.

Example: *Spring run Chinook salmon population abundance, spatial distribution, life history diversity, and productivity have declined substantially from historic levels; as a result, they are listed under state and federal Endangered Species Acts.*

What outcome(s) will solve the problem? The Logic Chain describes species and process-specific global goals – general statements that disaggregate the problem statement into its various components. Goals represent desired outcomes that will solve the issue(s) identified in the problem statement. Again, these are simple, factual statements (that rely on the agencies expert opinion) and do not pre-suppose a mechanism for solving the problem. The goals are “global” because they describe outcomes that may be partially or completely beyond the scope of the BDCP. Still, identification of these global goals is important to create a context for the overall conservation plan. Global goals and objectives will be identified by the fish and wildlife trustee agencies (e.g., as identified in the various conservation/recovery plans).

Example: *Global goals for spring run Chinook salmon include substantial increases in their 1) abundance, 2) spatial distribution, 3) life history diversity, 4) population productivity.*

How will we know then the global goal has been attained (what does solving the problem look like)? Global objectives provide specific values that describe the desired outcome (goal). Objectives are specific, measureable, attainable, relevant to the goal, and time-bound (S.M.A.R.T.) statements of what level of restoration constitutes attainment of the goal. Global objectives provide a clear standard for measuring progress towards a goal. Again, global objectives may be only partially relevant to the activities of the BDCP; their function is to define the magnitude of the problems so that recovery activities can be appropriately scaled.

Example: *Attainment of the spring run Chinook salmon global spatial distribution goal will occur by 2025 with restoration of self-sustaining populations in _ (# of) watersheds in the Sacramento River drainage and _ (# of) watersheds in the San Joaquin River drainage.*

How does BDCP intend to contribute to recovery of the covered species/ecosystem? Some of the covered species complete most or all of their life cycles in the Delta, whereas other species migrate through the Delta to complete their life cycles in different habitats. As a result, BDCP may not address every one of the global goal/objective pairings for each of the covered species. BDCP Goals are those global goals that BDCP intends to address, either partially or fully.

As with global objectives, BDCP Objectives are S.M.A.R.T. statements that define attainment of the (BDCP) goal. By presenting a detailed description of BDCP's intention for each species, BDCP objectives will insure that the overall plan is adequate and that conservation measures are prioritized by their ability to contribute to the objective.

Example²: *BDCP goal: Improve spatial distribution of spring-run Chinook salmon consistent with that described in the Draft recovery plan.*

BDCP objective: By 2020, eliminate all in-delta man-made (or exacerbated) barriers to migration of spring run adults and smolt to and from their historic spawning grounds.

What currently prevents us from attaining the BDCP objectives? Physical, chemical, and biological attributes of the Delta have changed dramatically over the past several decades (and that change is expected to continue into the future). Some of these changes are *stressors* to covered species and important ecosystem processes. However, the precise contribution of each stressor to a species' population decline is uncertain and there is some disagreement over whether particular changes are stressors at all. Also, many of the stressors are interdependent. Because of these uncertainties and the probability that multiple stressors are affecting the ecosystem, BDCP seeks to reduce many stressors simultaneously.

Our knowledge base (data, publications, conceptual and quantitative models) identifies stressors and will be used to organize these stressors by the likelihood and magnitude of their impact. The Logic Chain records the relative likelihood and importance of stressors that are believed to impair populations of the covered species and ecosystem processes. Describing the stressors (and assumptions about them) is a key step in constructing the overall conservation plan and in managing adaptively as the plan is implemented. For example, clear statements regarding where a stressor occurs, which species it impacts, and how certain we are that the stressor is important will help focus BDCP on the relevant stressors and prioritize conservation measures.

Examples: *1) Entrainment of juveniles at Delta water diversions is a stressor to spring-run distribution (and productivity and abundance);*

2) Low dissolved oxygen levels in the Stockton deepwater ship channel is a stressor to spring-run Chinook salmon spatial distribution;

3) Impassable structures on tributary streams are a stressor to spring-run Chinook salmon spatial distribution. Etc.

[In this example, stressor #1 and #2 fall within the geographical purview of BDCP and development of solutions might continue through lower sections of the logic chain; stressor #3 is not in the geographical purview of the BDCP, so that thread would not be developed further]

What will BDCP do to reduce stressors? Stemming from the list of stressors identified for each species and the ecosystem, *stressor sub-objectives* identify the plan's intent to address perceived problems. As with global and BDCP objectives, stressor sub-objectives are S.M.A.R.T. statements that clarify the plan's intentions with regard to different stressors as they articulate a desired outcome resulting from implementation of the conservation measures. These sub-objectives reveal the relative effort dedicated to alleviating each stressor and provide a basis for assessing whether the conservation measures will (cumulatively) achieve the stressor reduction objective (see *expected outcomes* below).

Example: *1) BDCP's stressor reduction sub-objective regarding entrainment of juvenile spring run Chinook at Delta water diversions is to reduce loss to _% of 1995-2005 levels by 2020;*

2) BDCP's stressor reduction sub-objective regarding impaired spring-run migration in the lower San Joaquin River is to eliminate (frequency of occurrence = 0)

² As with all "examples" in this user's guide, the specifics are intended for purposes of illustration only

critically low dissolved oxygen levels in the Stockton deepwater ship channel during the months of April through June in all years by 2020;

System-wide monitoring metrics and programs will be identified as a means of tracking progress towards plan objectives and sub-objectives. Data from monitoring plans will be collected, synthesized, and evaluated by a special entity (to be defined) that is charged with evaluating plan effectiveness and advising policy-makers about ongoing adaptive management actions.

What will BDCP do to achieve its goals and objectives? The BDCP conservation strategy consists of a number of different actions that address one or more of the stressors identified above for one or more of the covered species (or for the ecosystem as-a-whole). These conservation measures must be described in terms of their expected contribution to stressor reduction. In addition, potential negative impacts and other unintended consequences of the conservation measures should be described in the same detail as intended (positive) impacts. Furthermore, the logic chain requires an indication of the likelihood (certainty) that conservation measures will produce their anticipated effects (both positive and negative).

Example: *Conservation Measure ___ is highly likely to support the sub-objective of “eliminating critically low dissolved oxygen levels in the Stockton deepwater ship channel during the months of April through June by 2020”; negative biological outcome are believed to be unlikely and low magnitude.*

How will these actions achieve the goals and objectives? In order to understand the value of each action (e.g. to prioritize implementation) and to assess the strength of the entire proposal, BDCP will convene teams of scientists and technical advisors to make detailed quantitative estimates of expected outcomes (positive and negative/unintended outcomes that are anticipated) from each conservation measure. Expected outcome magnitudes will be accompanied by estimates of the uncertainty surrounding the magnitude. In this way, the potential efficacy of the proposed plan can be evaluated and the plan’s actual accomplishments can be assessed as implementation proceeds.

The magnitude of expected outcomes and uncertainties surrounding those outcomes will be based on explicit hypotheses about how we expect conservation measures to work. To the extent possible, conservation measures will be designed, implemented, and monitored in a way that allows testing the hypotheses upon which they are based. Information gathered from compliance and performance monitoring will be synthesized and evaluated to assess the validity of different hypotheses and the efficacy of the conservation measures and the overall plan; conservation effort and the array of conservation actions will be adjusted to make continuing progress towards stressor-reduction sub-objectives and overall plan objectives.

How will we know if it’s working (and adjust if it’s not)? The BDCP conservation strategy is an adaptive management plan; we learn to manage by managing in order to learn. Monitoring at various levels (system-wide, compliance, and measure performance) will capture physical, chemical, and biological changes in the ecosystem in order to determine the effectiveness of the overall plan and its component parts as well as ongoing changes in response to other drivers (e.g. climate change). Data collection, analysis, synthesis, and evaluation are critical to BDCP’s success. Appropriate methods and management structures for each of these processes will be established as part of the initial plan proposal. Furthermore, the means by which new information (e.g. lessons learned during early stage implementation) is incorporated into adaptive management decisions will be described in detail prior to plan implementation as part of the BDCP governance process.

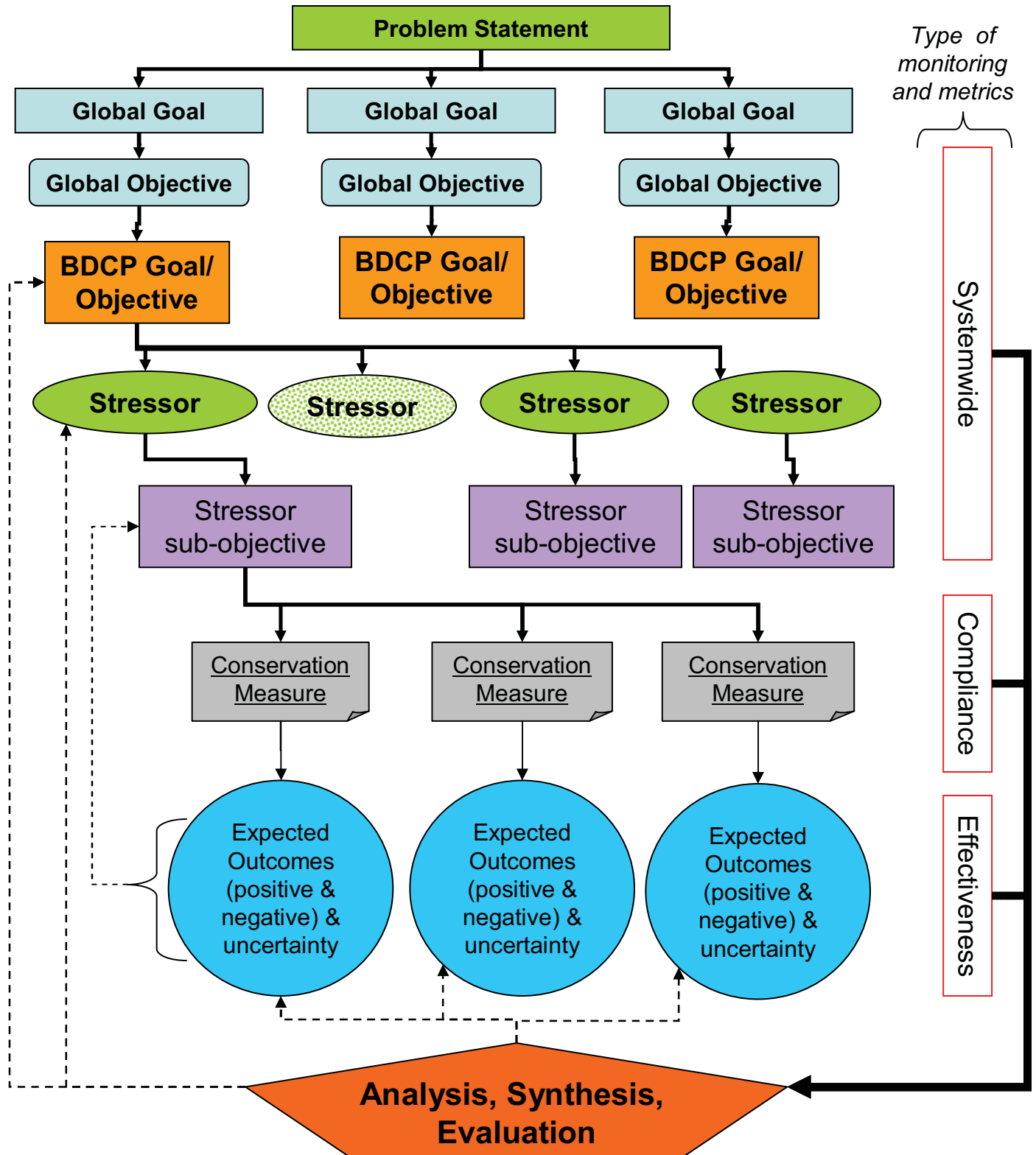
PRIORITIZATION PRINCIPLES

How should we choose between competing actions? Conservation measures must be prioritized to maximize the effect of limited resources, to provide rapid relief for the BDCP covered species, and to insure that the plan is based on the best available information and understanding of the covered species and the Delta ecosystem. Factors that influence the prioritization of conservation measures include:

- Likelihood of positive and negative outcomes
- Magnitude and breadth (number of species affected) of positive and negative outcomes
- Time required to develop and document positive outcomes
- Ability to implement the action (e.g. financial, legal, and logistical constraints).
- Reversibility

These principles are covered in more detail in the plan and are explicitly described as justification for each plan element (conservation measure).

The Logic Chain Architecture



Schematic of the Logic Chain architecture for one species. One stressor (dappled green) is outside of the BDCP purview; thus it has no associated BDCP goal. In this example, stressors and steps below this level refer to one of the BDCP objectives; other BDCP objectives would be developed simultaneously. Similarly, for illustration purposes, only one stressor sub-objective is developed here. Dashed lines refer to different types of evaluations (based on monitoring data) that will be used to adaptively manage within the conservation strategy.

This staff report has been revised due to additional information provided to the Council from the Department of Water Resources

Briefing on Central Valley Flood Management Plan

Summary: This item is intended to provide background for the Council as it considers risk management and land use issues in the Delta. It will feature a presentation by Department of Water Resources (DWR) staff, and includes background reading material recommended by DWR.

The purpose of the Central Valley Flood Management Planning (CVFMP) Program is to improve integrated flood management in the Sacramento and San Joaquin Valleys. Legislation passed in 2007 directs the California Department of Water Resources (DWR) to develop three important documents that will guide improvement of integrated flood management:

- State Plan of Flood Control (SPFC) Descriptive Document to inventory and describe the flood management facilities, land, programs, conditions, and mode of operations and maintenance for the State-federal flood protection system in the Central Valley.
 - Flood Control System Status Report to assess the status of the facilities included in the SPFC Descriptive Document, identify deficiencies, and make recommendations.
 - Central Valley Flood Protection Plan (CVFPP) to describe a sustainable, integrated flood management plan that reflects a system-wide approach for protecting areas of the Central Valley currently receiving protection from flooding by existing facilities of the SPFC. DWR is required to prepare the CVFPP by January 1, 2012, for adoption by the Central Valley Flood Protection Board by July 1, 2012, and to update the plan every five years (years ending in 2 and 7).
-

Background

In January 2005 the Department of Water Resources (DWR) published a white paper on the critical condition of California's flood management system entitled "Flood Warnings: Responding to California's Flood Crisis."

According to the white paper, "While flooding has always been an unfortunate fact of life in many parts of California, the need for adequate flood management is more critical now than ever before. California's Central Valley flood control system is deteriorating and, in some places, literally washing away. Furthermore, the Central Valley's growing population is pushing new

housing developments and job centers into areas that are particularly vulnerable to flooding. Yet, in recent years, funding to maintain and upgrade the flood protection infrastructure has sharply declined. Compounding these challenges is a recent court ruling, *Paterno v. State of California*, that held the state liable for flood-related damages caused by a levee failure. Together, these factors have created a ticking time-bomb for flood management in California. This paper described the many challenges facing California with respect to flood risks and the neglected and deteriorating flood protection system. The paper also recommended several strategies that could reduce future flood risks.

Since that time, and in light of the catastrophic flooding of New Orleans following Hurricane Katrina, there has been increased focus on flood risk management in California. In November 2006, the voters of California passed two bond measures, Propositions 1E and 84, which provide approximately \$4.9 billion specifically for flood risk reduction measures.

Through the 2007 Legislative Session, a cooperative effort involving the State, members of the Legislature, local governments and planning agencies, landowners and developers was undertaken to implement recommendations of the 2005 white paper. In October 2007, Gov. Arnold Schwarzenegger signed a package of bills that take steps to do just that.

This Package included bills to:

- **Develop Plans to Address Flood Control System Deficiencies in the Central Valley**
Much of the existing flood management system in the Central Valley is made up of a complex, integrated system of levees, channel improvements, bypasses, and related facilities. Rapid development and land use changes in the Central Valley have exposed deficiencies in this flood management system. Over time, historically agricultural lands and rural communities have been, and continue to be, converted to densely populated residential and urban centers. Facilities originally constructed to reclaim and reduce flooding on agricultural lands may provide inadequate protection for these urban and urbanizing areas, even if improvements are made to meet minimum federal standards. Further, while levees and other facilities may decrease the frequency of flooding, they do not offer complete protection from flooding.

The Central Valley Flood Protection Act of 2008, enacted by SB 5, seeks to address these problems by directing the California Department of Water Resources (DWR) and the Central Valley Flood Protection Board (Board) to prepare and adopt a Central Valley Flood Protection Plan (CVFPP) by mid-2012.

- **Provide Updated Information on Flood Risk**
Cities and counties throughout the State rely upon federal flood plain information when approving developments, but the information available is often out of date and may not provide sufficient information to characterize the potential flood risk. Further, the primary purpose of federal flood standards provided by the Federal Emergency Management Agency (FEMA) is to establish a limit for requiring flood insurance for participating communities. These standards are not meant to establish an acceptable level of flood protection for urban and urbanizing areas.

The flood legislation requires DWR and the Board to adopt a schedule for mapping flood risk areas in the Central Valley. It also requires that DWR prepare and the Board approve levee

flood protection zone maps. Beginning September 1, 2010, DWR is to provide yearly notices to owners of property in a levee flood protection zone.

○ **Require Land Use Planning and Management to Consider Flood Risk**

Linking land use decisions to flood risk estimates comprises another element of protecting lives and property in the Central Valley. Federal, State, and local agencies may construct and operate flood protection facilities to reduce flood risks, but some amount of flood risk will nevertheless remain for those who choose to reside in flood plains. Improving flood risk awareness will help ensure that Californians make careful choices when deciding whether to live in Central Valley flood plains, and if so, whether to prepare for flooding and/or maintain flood insurance.

The flood legislation sets deadlines for cities and counties in the Central Valley to amend their general plans and zoning ordinances to conform to the CVFPP within 24 months and 36 months, respectively, of its adoption by the Board. Once the general plan and zoning ordinance amendments are enacted, the approval of development agreements and subdivision maps is subject to restrictions in flood hazard zones. Central Valley counties are obligated to develop flood emergency plans within 24 months of CVFPP adoption.

List of Attachments Provided by DWR

- Attachment 1: PowerPoint presentation "DSC Presentation by DWR"
- Attachment 2: 2005 White Paper; Flood Warnings: Responding to California's Flood Crisis
(http://www.water.ca.gov/pubs/flood/flood_warnings_responding_to_california's_flood_crisis/011005floodwarnings.pdf)
- Attachment 3: 2007 California Flood Legislation – Summary
(<http://www.water.ca.gov/legislation/2007-summary.pdf>)
- Attachment 4: FloodSAFE California Achievements, December 2009
(http://www.water.ca.gov/news/newsreleases/2010/01252010floodsafe_achievements.pdf)
- Attachment 5: FloodSAFE focus (a newsletter) – Volume 1, Issue 1, May 2010
(<http://www.water.ca.gov/floodsafe/docs/FloodSAFEFocus201005.pdf>)
- Attachment 6: Various Fact Sheets
a. Central Valley Flood Management Planning Program
(http://www.floodplain.org/cmsAdmin/uploads/FloodSAFE_HowtoGetInvolved.pdf)
b. Central Valley Flood Management Planning - How to Get Involved
(http://www.floodplain.org/cmsAdmin/uploads/FloodSAFE_CentralValleyFMPP.pdf)
c. Improving Flood Management in the Central Valley

(http://www.water.ca.gov/pubs/flood/improving_flood_management_in_the_central_valley/factsheetimprovingfloodmgmtcv201006.pdf)

d. Central Valley Floodplain Evaluation and Delineation Program

(http://www.water.ca.gov/pubs/flood/central_valley_floodplain_evaluation_and_delineation_program/cvfed_final.pdf)

e. Levee Evaluations Program

(<http://www.water.ca.gov/levees/evaluation/docs/factsheet-levee-eval-prog.pdf>)

f. Levee Analysis Methods

(http://www.water.ca.gov/floodsafe/docs/Levee_Analysis_Methods.pdf)

Attachment 7: Central Valley Flood Protection Plan, Interim Progress Summary No.1

(http://www.water.ca.gov/pubs/planning/central_valley_flood_protection_plan_interim_progress_summary_no.1/interimprogresssummary1cvfpp20100420.pdf)

Contact

Keith Coolidge
Acting Chief Deputy Executive Officer

Phone: (916) 445-4503

Overview of DWR's Flood Management Activities Related to the Delta

A Briefing to the Delta Stewardship Council

June 24, 2010

Purpose of Presentation

- Present an overview of DWR's flood management activities
- Describe important context for considering changes in the Delta
- Gather list of questions the Council members would like addressed during our next briefing in July

Sustainable Water Management



We must work toward a system sustainable in all three areas:

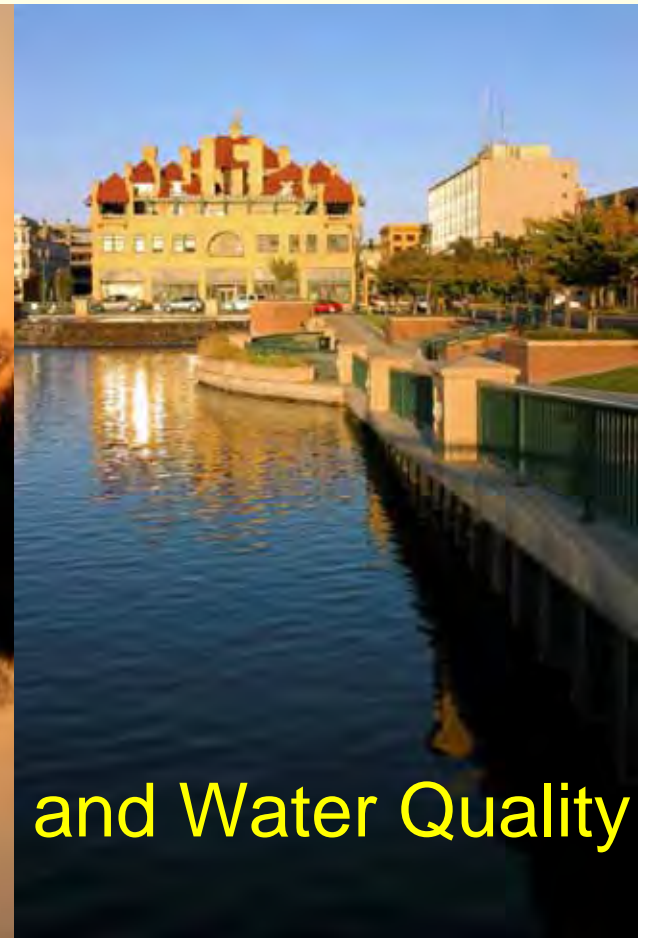
- Social**
- Economic**
- Environmental**

Integrated Water Management

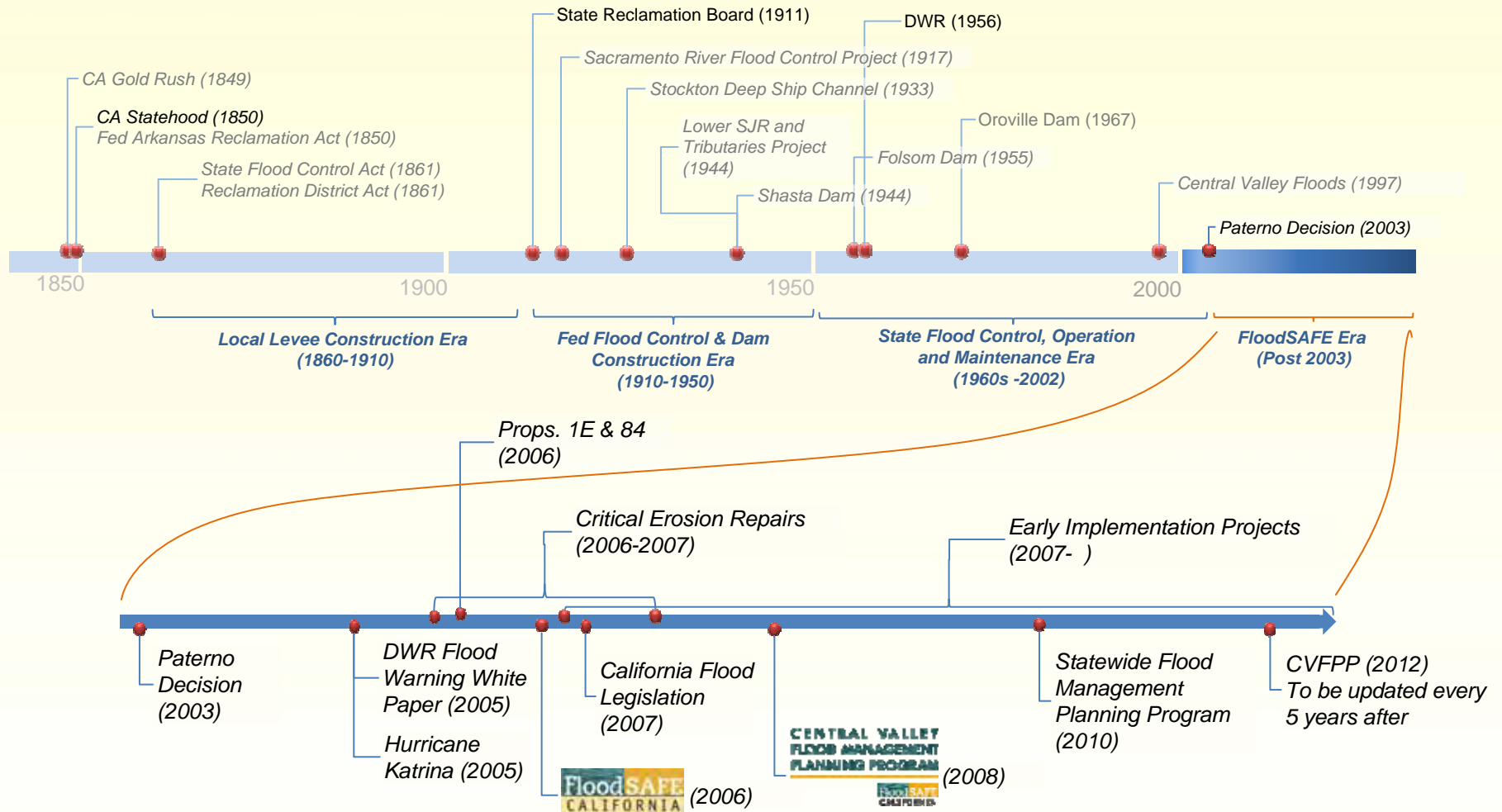
Flood Protection

Water Supply

Ecosystem Health



A Long History of System Evolution



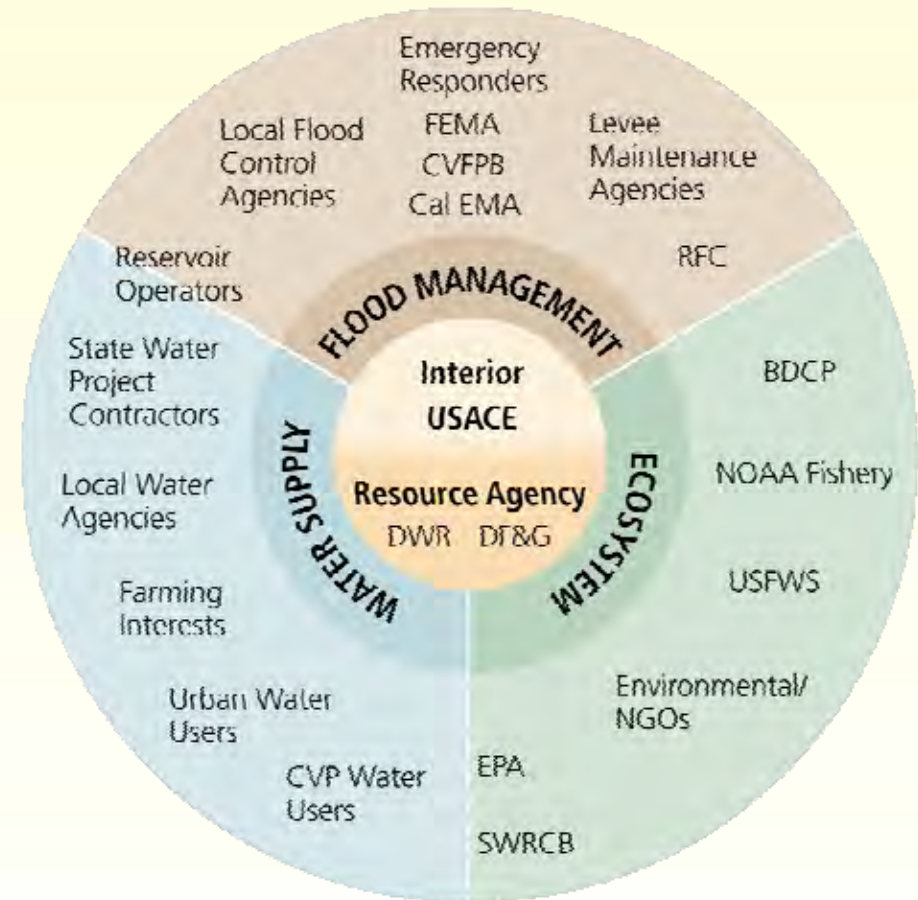
Federal, State, and Local Roles

USACE: Fed partner, traditional designer/constructor of State-Federal facilities; modifications need federal approval

CVFPB: Lead non-federal sponsor with the USACE for flood protection projects in the Sacramento-San Joaquin Valley; approves annual budget for Delta Levee Subventions Program

DWR: Manages emergency response Statewide through Standardized Emergency Management System; administers Delta Special Projects Program and Delta Levee Subventions Program for local levee maintenance

LMA's: Owner of local levees; maintains local and State-federal project levees



FloodSAFE California

Improve integrated flood management in the State through a system-wide approach, while carrying out regional projects and enhancing core flood management programs, with the following strategic goals.

- Reduce the chance of flooding
- Reduce the consequence of flooding
- Sustain economic growth
- Protect and enhance ecosystem
- Promote sustainability



FloodSAFE Implementation

- Recognize DWR's base flood management programs must continue beyond currently available bond funds
- Require additional State funds, cost sharing from federal and local entities, or other funding for a sustainable practice
- Implement improvements and conduct planning activities

Flood Management Improvement Processes

- Improve basic flood management functions
- Implement regional projects to reduce flood risks
- Develop a comprehensive, system-wide flood management plan for the Central Valley



Central Valley Flood Protection Plan

- A strategic flood management plan for the Sacramento-San Joaquin Valley
 - DWR submit a draft plan to CVFPB by January 2012
 - CVFPB to adopt a plan by July 2012
 - Must be updated every 5 years after

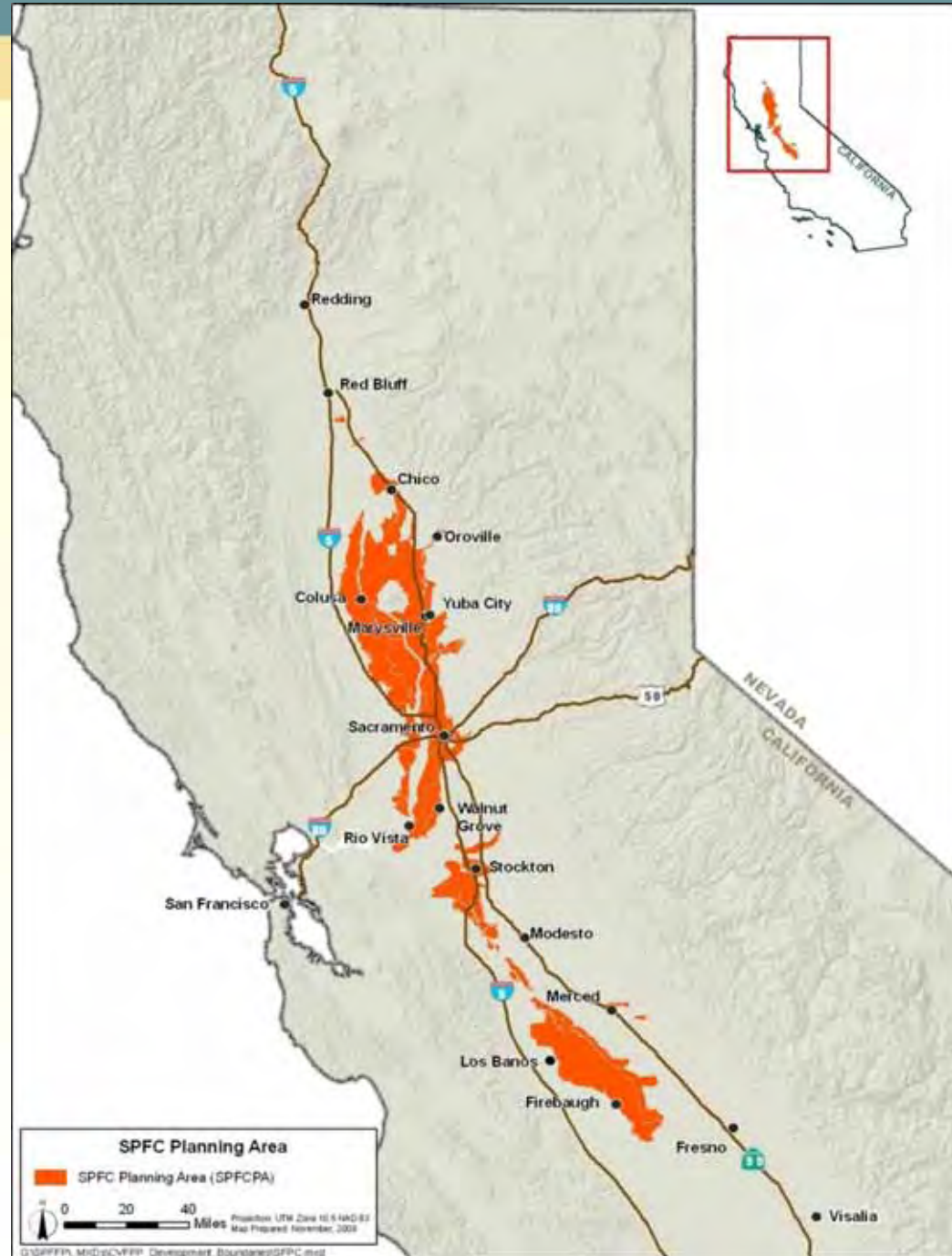


2012 CVFPP Content



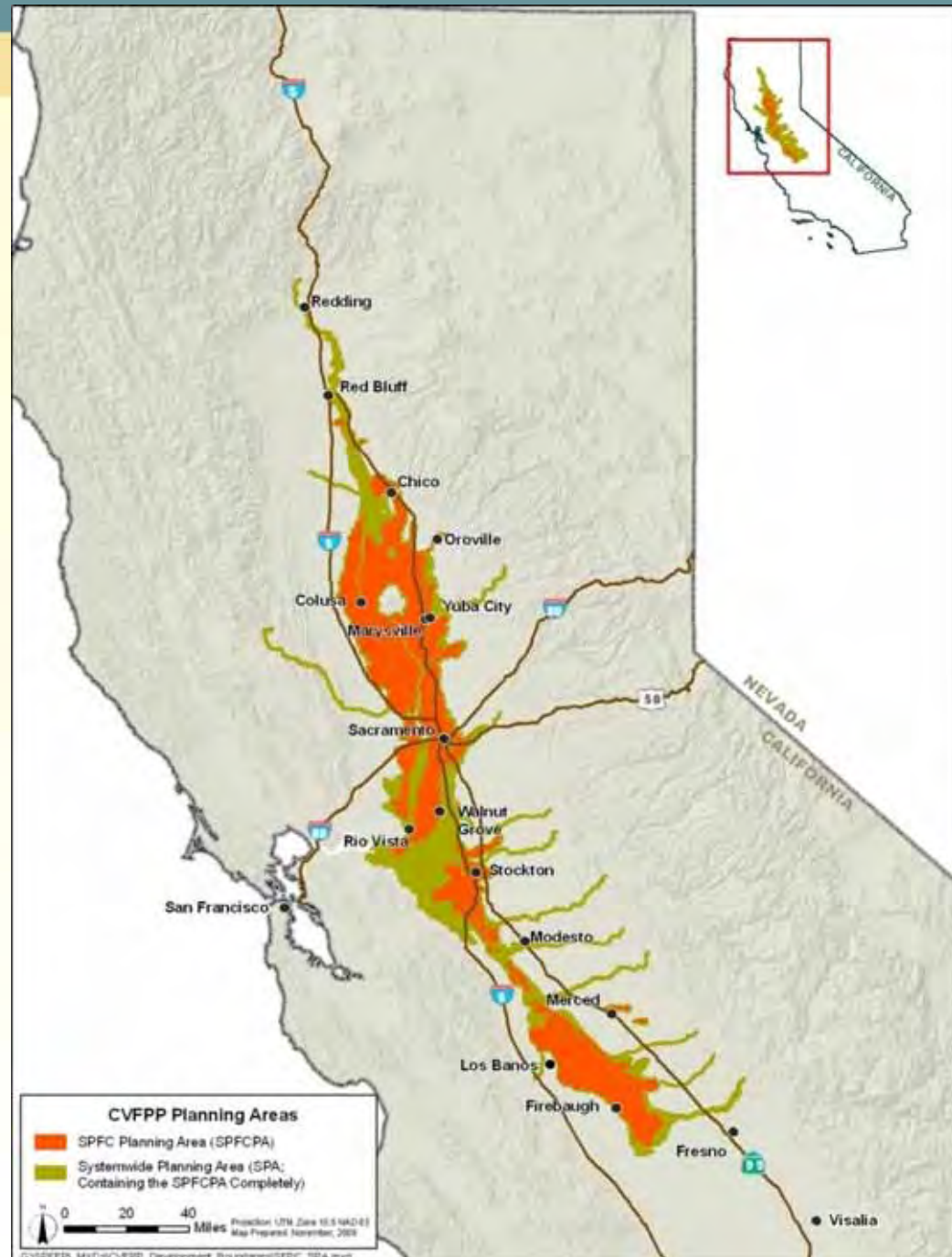
- Define flood and related problems
- Describe system, performance and risks
- Set goals and objectives
- Identify and evaluate management actions
- Identify and evaluate potential regional and system solution sets
- Define vision and next steps for improving system
- Set criteria for local compliance related to the adoption of CVFPP

The CVFPP focuses on improving flood management for the lands currently receiving protection from the State Plan of Flood Control (SPFC).

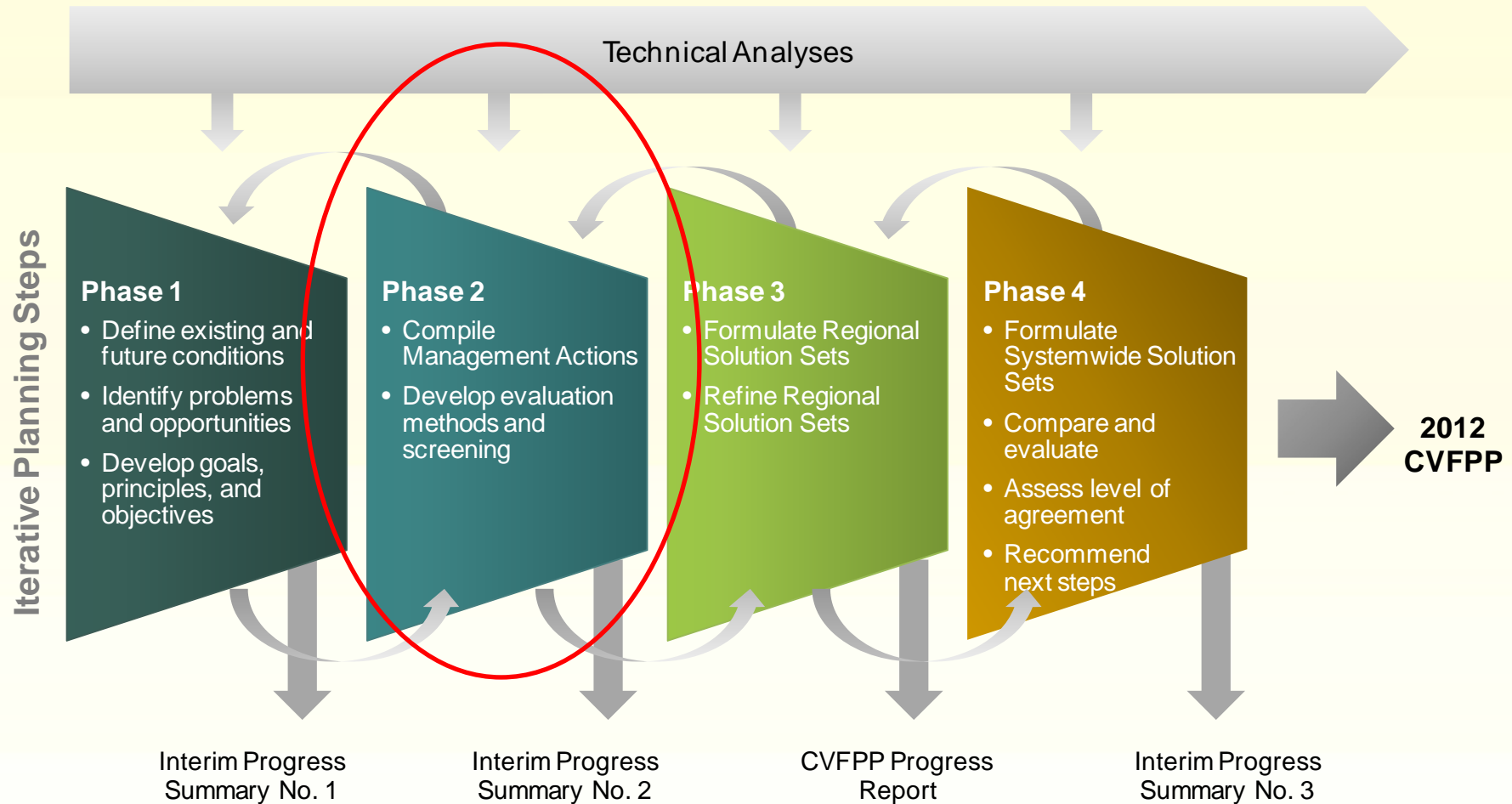


Systemwide Planning Area

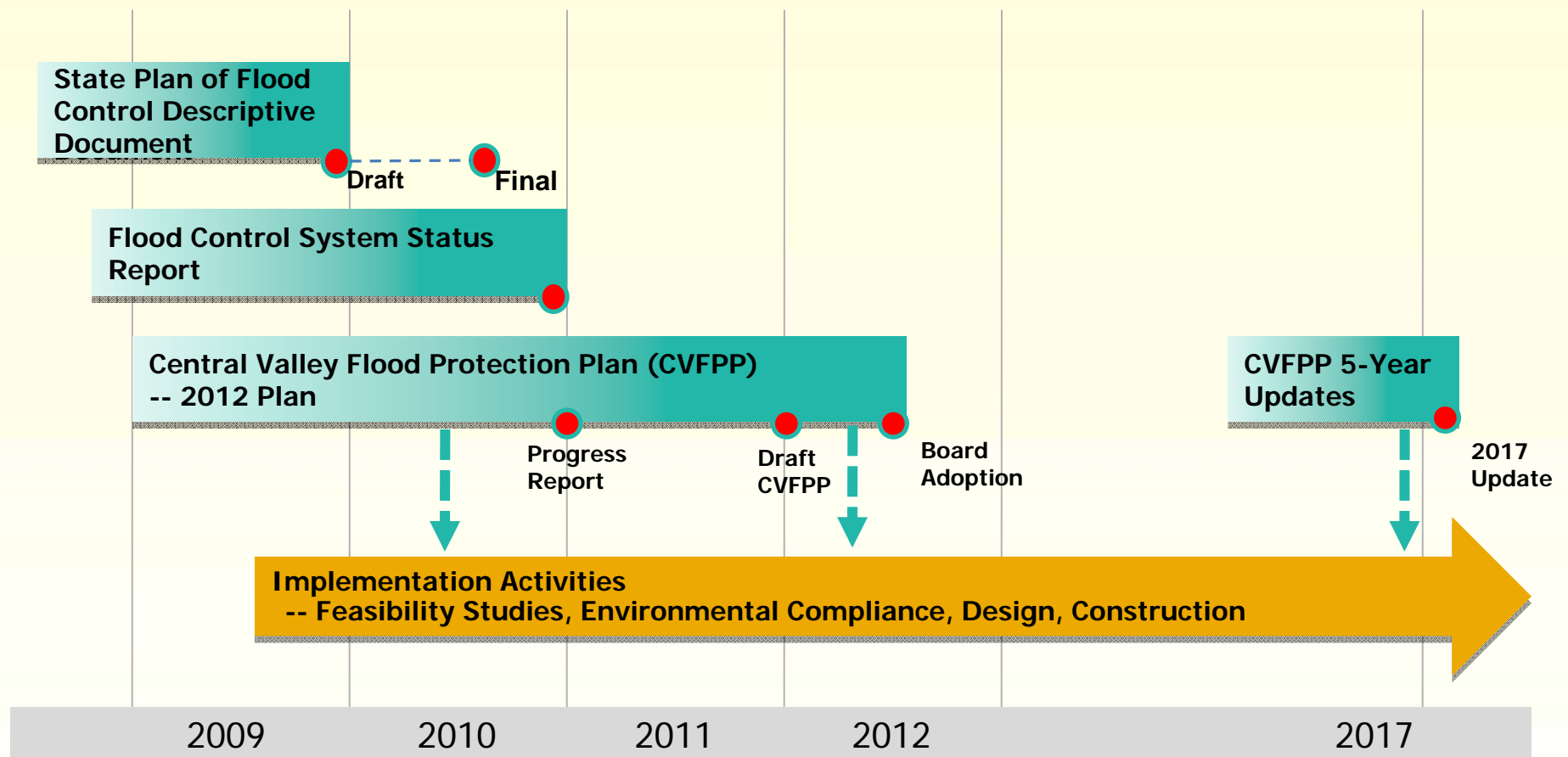
The CVFPP analysis will be conducted on a system-wide basis, and include considerations of other integrated water management functions provided in the same system.



2012 CVFPP Planning Process



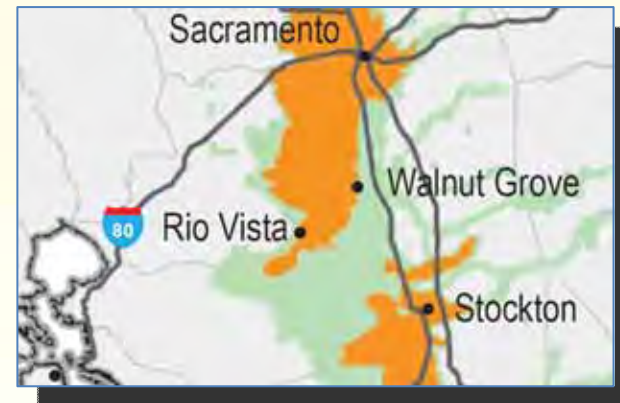
FloodSAFE CALIFORNIA



Key: ● Milestone Document

Delta Considerations in the CVFPP

- All lands that receive protection from the SPFC, including lands that are also located within the legal Delta, will be evaluated for flood management improvement under the CVFPP in the same manner.
- Any impacts due to potential changes in the upstream Sacramento-San Joaquin River Flood Management System will be analyzed and addressed including impacts that occur in the Delta as a result of upstream improvement.



Delta Considerations in the CVFPP (cont'd)

- The areas in the Delta at regular risk of flooding from the tidal estuary will be evaluated and addressed through other activities
 - Other FloodSAFE programs (e.g., Statewide Flood Management Planning Program and Delta Risk Management Study)
 - Federal investigations (e.g., USACE Delta Islands Levee Feasibility Study)
- The results of the additional Delta evaluations will be incorporated into the systemwide perspective of the CVFPP

Statewide Flood Management Planning

- Include flood management in California Water Plan in 2009 and 2013 updates
- Prepare *Recommendations Report for Improving Integrated Flood Management throughout California*
 - Project Launch: Fall 2010
 - Preliminary Report: Jan 2012
 - Final Report: 2014

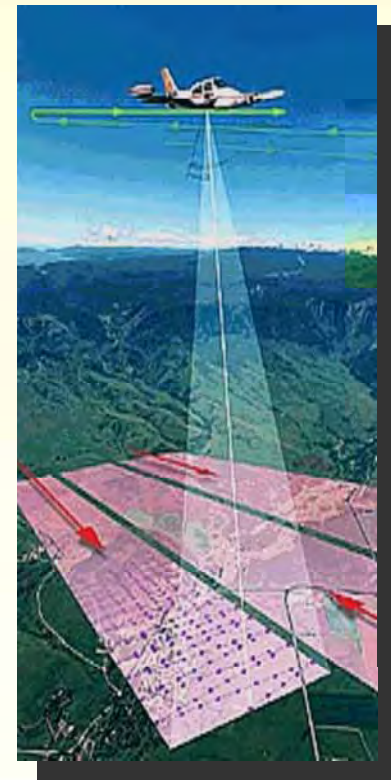


Recommendations Report Content

- Characterize flood risk statewide, including the tidal flood risk in the Delta and coastal areas
- Inventory flood infrastructure and assess needs for improvements
- Estimate costs for improvement
- Develop a financing strategy for statewide improvements
- Make recommendations for future coordinated policy and actions to improve integrated flood management

Other FloodSAFE Projects Related to the Delta

- **Early Implementation Projects** – DWR is working with RD-17 on a 100-Year Levee Seepage Area Project for consists of increasing the level of flood protection for the South Stockton, Lathrop and Manteca areas
- **Central Valley Floodplain Evaluation and Delineation** – this program is developing detailed topography information and updated hydraulic analysis tools for all areas receiving protection from the State Plan of Flood Control



Other FloodSAFE Projects Related to the Delta

- **Levee Evaluations** – this program is evaluating the current status of the project and associated non-project levees for urban and non-urban areas
- **New Flood Planning Hydrology** – this project is developing a new data set for studying potential flooding originating from precipitation in the Sacramento–San Joaquin Valley consistent with the Corp’s updated analysis requirements



Other FloodSAFE Projects Related to the Delta

- DWR Levee Repairs Program
 - Sacramento River Bank Protection Project
 - Sacramento-San Joaquin Erosion Repairs Project
 - PL84-99 Rehabilitation Assistance Program
 - Delta Levee Stability Program (In-coordination with Delta Levee Subventions Program)
- About 50 million dollars delta levees repairs from 2006 through 2009



More Information

<http://www.water.ca.gov/floodsafe/>

<http://www.water.ca.gov/cvfmp/>



This staff report has been revised due to additional information provided to the Council from the project proponent. This includes detailed proposed project descriptions, CEQA documentation, and other related information for each project specified within this report.

Delta Aqueduct Protection Projects

Requested Action: Staff recommends that the Council approve the proposed project. The purpose of the Council's approval is to facilitate funding by DWR for local projects consistent with the criteria established by the Legislature in Water Code § 83002(a)(1), and is subject to CEQA.

Background

At the May 2010 Council meeting, DWR presented a proposal for Proposition 1E funding expenditures, which are described by The Disaster Preparedness and Flood Prevention Bond Act of 2006, as mandated by Senate Bill 2X 1 (Perata 2008). Water Code §83002(a)(1) states: "not less than thirty-five million dollars (\$35,000,000) shall be expended by the department for projects to reinforce those sections of the levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta and which are vulnerable to flood damage, including the installation of scour protection on the supports of the aqueducts in those areas located adjacent to the sections of the levees that have been identified as having the highest risk for breaches or failure."

Water Code §83002(a)(1) also requires that "Prior to the design or construction of any project funded pursuant to this paragraph, the California Bay-Delta Authority, or its successor, shall approve the specific project or program."

In response to a Proposal Solicitation Package (PSP), DWR selected 10 projects for levee improvements which met the statutory criteria, for a total State cost share of \$35.2 million. These projects propose to improve levees which protect islands upon which the East Bay Municipal Utility District's (EBMUD) Mokelumne Aqueduct traverses. These islands are Orwood, Palm, Upper and Lower Jones, and Lower Roberts.

Staff has reviewed the proposed projects and concurs that they appear to meet the statutory criteria for funding pursuant to water code §83002(a)(1).

During the course of discussions at the May 2010 Council meeting, Council members and staff requested further information from DWR before the Council could adequately consider approving the proposed levee improvement projects as consistent with the Council's policy objectives and direction in the development of a Delta Plan. In particular, the Council requested further information about potential "Paterno-type" and other types of liability and about CEQA compliance associated with approval of these projects.

CEQA Compliance: The Council has discretionary approval authority with regard to these proposed projects, and as such, is a "responsible agency" under CEQA for each project. With respect to environmental review, the Council, in its position as a responsible agency, requires that all relevant CEQA issues are adequately addressed prior to the Council's approval of any project.

Construction work that is subject to the California Environmental Quality Act (CEQA) shall not proceed within this project until documents that satisfy the CEQA process are received by DWR, and DWR has completed its CEQA compliance review. Work that is subject to a CEQA document shall not proceed until and unless approved by the Project Manager. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Once CEQA documentation has been completed, DWR will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

Prior to any construction, the specific project proponents (Reclamation Districts) must submit to the Council documents demonstrating compliance with CEQA. The documents must have sufficient detail such that the Council can render independent judgment on the project's environmental impacts. The Council reserves full discretionary authority for project disapproval at that point, including the discretion to find that CEQA documents are legally adequate and yet to reject the project on substantive environmental grounds.

The purpose of the Council's approval is to facilitate funding by DWR for local projects consistent with the criteria established by the Legislature in Water Code § 83002(a)(1), and as such, the Council does not hereby assume any responsibility for the safety of any Delta levee against failure.

The project proponents have filed CEQA Notices of Exemption for each project, which are shown in Attachment 11. Project descriptions are shown in Attachment 12. These project descriptions have been reviewed by Council staff and appear to adequately describe the nature and extent of work proposed, and that they meet the statutory criteria set forth in Water Code § 83002(a)(1). The Notices do not, however, have sufficient information for the Council to reach its own independent determination concerning whether the projects are exempt from the provisions of CEQA.

Potential Liability Issues: In 2003 a State appeals court held the State liable for failure of a levee generally operated and maintained by a local levee maintenance district, on the theory that the State incorporated the levee into the unified public flood control system. (Paterno v. State (2003) 113 Cal. App 4th 998, rev. denied 3/17/2004). The levees at issue here have not been incorporated into the flood control system – i.e. they are not “project levees”. However, Paterno-type liability and other theories of liability for flood damage are typically dependent on the facts of each case (“project” or “non-project levee”; cause of flood damages, responsibilities of relevant entities).

Staff has discussed the issue regarding potential liability associated with approving these projects, and based upon discussion and review of appropriate materials does not believe that approval of funding for these non-project levees would increase the State’s or the Council’s Paterno-type or other type of flood related liability. DWR provided language to the Council staff which indicates the local participating agencies would indemnify the State against any liability arising from these projects. Council staff does not recommend pursuing indemnification from DWR for this project.

List of Attachments

Attachment 1 - DWR FESSRO Staff Recommendation, Delta Aqueduct Protection Projects.

Attachment 2 - Letter to Phil Isenberg from EBMUD, dated June 14, 2010

Attachment 3 - Jones Tract Flooding 2004 (#1)

Attachment 4 - Jones Tract Flooding 1980 (#2)

Attachment 5 - Jones Tract Flooding 1980 (#3)

Attachment 6 - Trapper Slough levee

Attachment 7 - Island Assets and Details

Attachment 8 - Delta Map

Attachment 9 - Copy of Paterno Decision

Attachment 10 – Background Information from 10/25/05, Legislative Flood Management Liability

Attachment 11 - CEQA Notices of Exemption

Attachment 12 – Specific Project Descriptions

Contact

Eric Nichol, P.E.
Staff Engineer
Delta Stewardship Council

Phone: (916) 445-5339

Department of Water Resources

FloodSAFE Environmental Stewardship and Statewide Resources Office

A photograph of a long, straight aqueduct stretching into the distance under a clear sky. The aqueduct is supported by concrete pillars and has a series of pipes or conduits running along its length. Trees and vegetation are visible on the right side of the aqueduct.

**Proposition 1E Expenditures
Staff Recommended Aqueduct
Protection Projects**

**Gail Newton, Chief,
FloodSAFE Environmental Stewardship and
Statewide Resources Office
June 24, 2010**



FloodSAFE Environmental Stewardship and Statewide Resources Office

Floodway Ecosystems Sustainability Branch

- Central Valley Flood Protection Planning (Environmental Stewardship)
- Conservation Strategy for the CVFPP
- Regional Advance Mitigation Planning

Environmental Restoration & Enhancement Branch

- Riverine Ecosystems Section (Fish Passage, Urban Streams)
- Special Restoration Projects (Salton Sea)
- Delta Ecosystem Enhancement Section

Delta Levees and Environmental Engineering Branch

- Subventions
- Special Projects
- Special Investigations (DRMS, North Delta, LiDar/GIS)

Proposition 1E

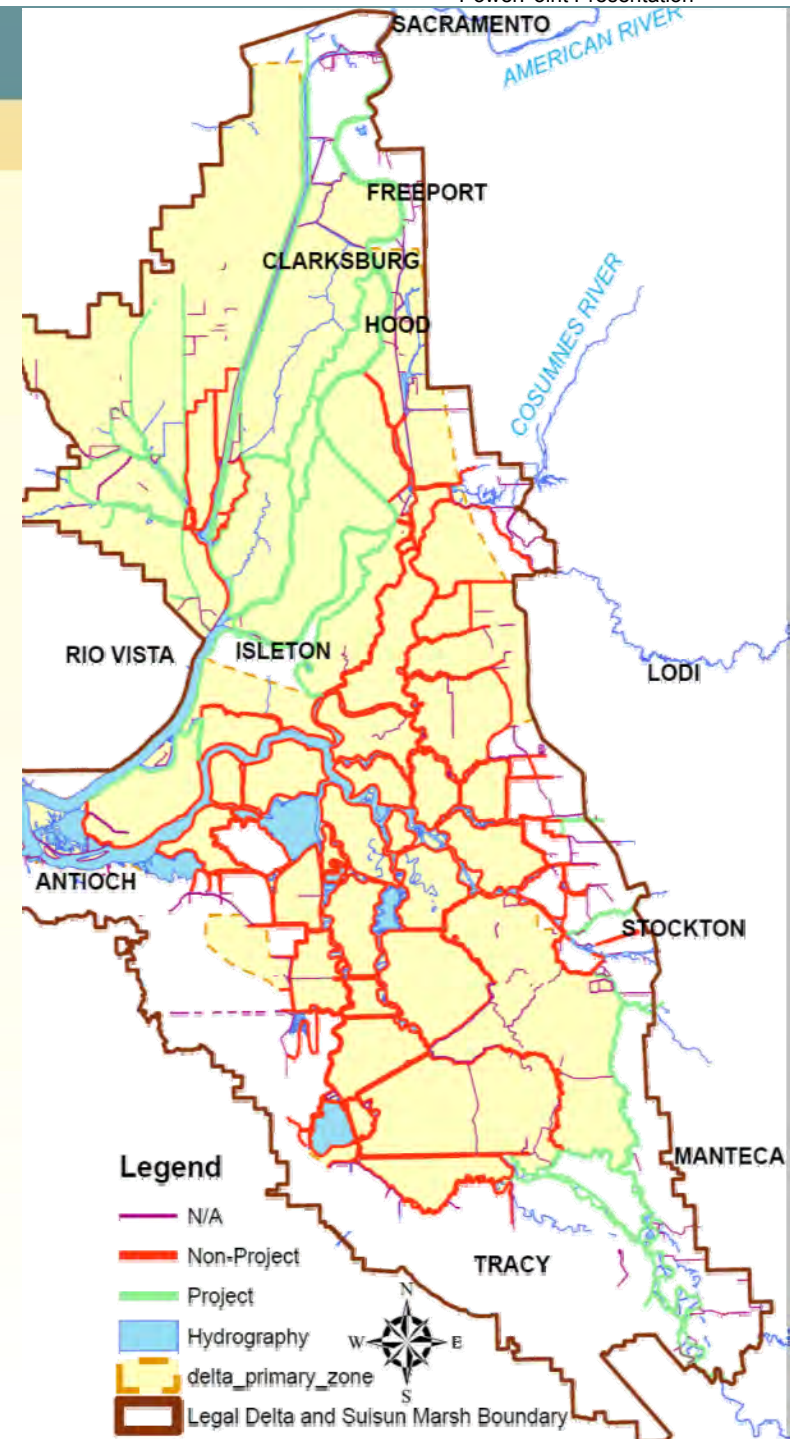
Disaster Preparedness and Flood Protection Bond Act of 2006

- Provides Funding (Public Resources Code 5096.821(c))
 - To reduce the risk of levee failure in the Delta.
 - The funds shall be expended for both of the following purposes:
 - Subventions
 - Special projects

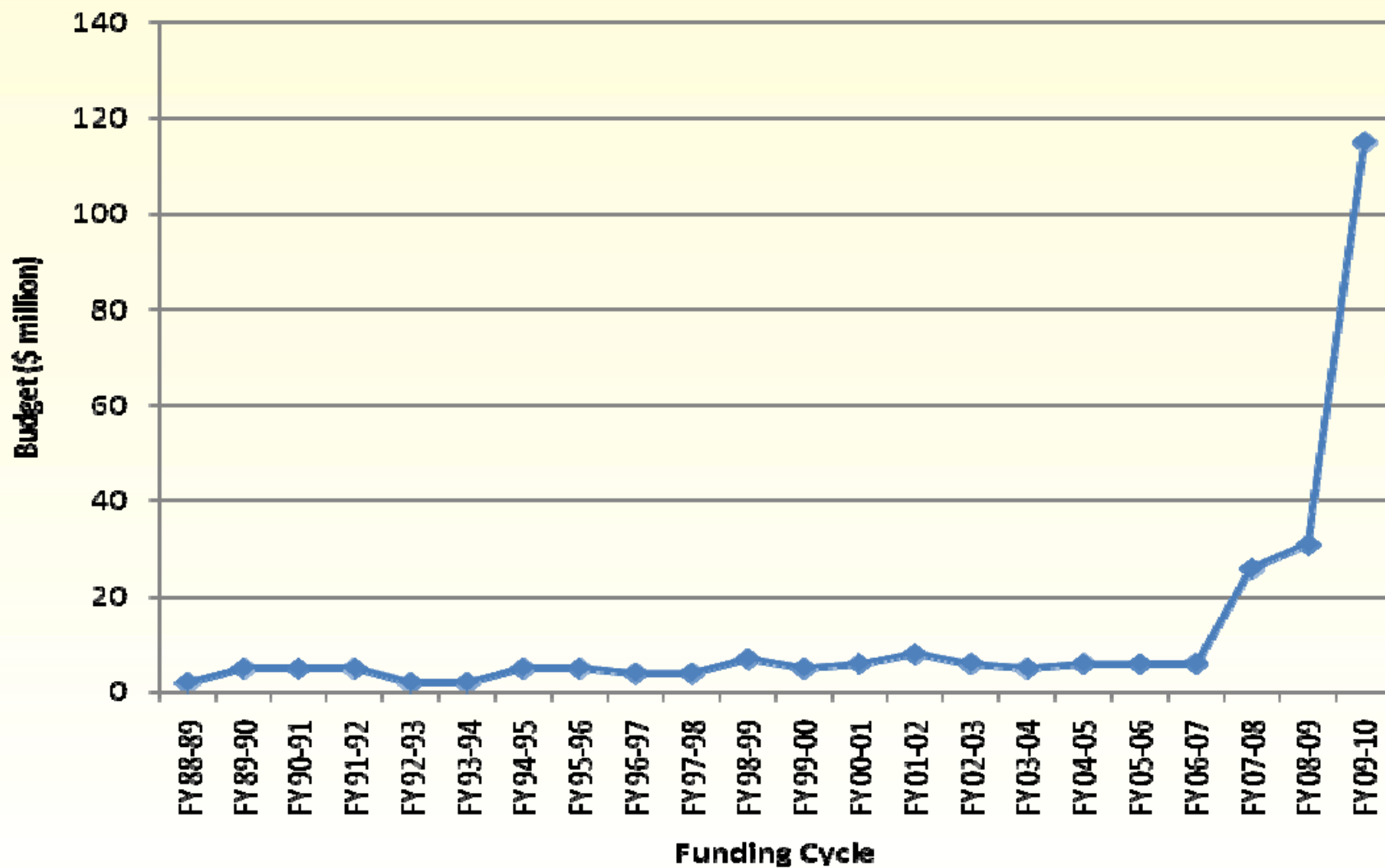


Special Projects

- Provide technical & funding assistance to local levee maintaining agencies within the Sacramento San-Joaquin Delta.
- The primary purpose is to protect assets of Statewide importance.
- Maintain and improve Delta levees with the requirement of net habitat improvement.



Special Projects Funding



Project Solicitation Package (PSP)

- Final Near-Term Guidelines and PSP released on February 16, 2010
- Proposals due March 26, 2010
- Additional information requests 2 weeks
- Proposal review and scoring
- Coordination with other sections of DWR and other agencies (e.g., COE, DFG, EBMUD)
- Final scoring completed May 24, 2010, and transmitted to DSC for May hearing
- Agenda item continued to the June hearing

Senate Bill xx1

California Water Code 83002 (a)(1)

- Appropriates Proposition 1E Funding
 - \$135 million for emergency preparedness supplies & projects
 - Of this, at least \$35 million for projects that protect water supply aqueducts that cross the Delta.
 - reinforce levee sections near aqueduct
 - install scour protection on aqueduct supports near levees



Summary

- 12 Proposals
- 5 Reclamation Districts
- 1 Engineering Firm
- 1 Aqueduct, the Mokelumne (EBMUD)

Staff Recommendation

- Fund 10 Proposals
- Total Project Cost =\$41.3 million
- State Cost Share = \$35.2 million
- Local Cost Share = \$6.1 million
- Total Levee Miles Improved = 41 miles

Recommended Projects listed in Attachment A

Delta Aqueduct Protection Projects

How do Projects fit with the State priorities for the Delta?

- WC 12311 (a) “...This program shall have, as its primary purpose, the protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and fish and wildlife habitats, and other public benefits. The program shall also include net long-term habitat improvement. “

Delta Aqueduct Protection Projects

How do Projects fit with the State priorities for the Delta? (continued)

CALFED ROD – Achieve Base Level Protection

- Uniformly improve Delta levees to PL84-99.
- Establish stable funding source.
- Coordinate permitting process.

Aqueduct Protection Projects Selection Criteria

What selection criteria were used by FESSRO staff?

- Life Safety – Increase in level of protection for people
- Infrastructure
 - Protection of State Highways
 - Protection of Local Assets - protection of local and agricultural businesses
 - Emergency – protection of roads, utilities, services, fuel center, food centers etc.
 - Water Conveyance/Water supply reliability – levee project that includes protection of water conveyance structures

Aqueduct Protection Projects Selection Criteria (continued)

What selection criteria were used by FESSRO staff?

- Ecosystem Restoration or Enhancements – Project provides no net loss and net enhancement
- Partnerships – (funding relationship with other interested groups)
- Levee Proximity to Aqueduct (for Delta Aqueduct Project)
- Habitat

Delta Interim Plan

(Sacramento-San Joaquin Delta Reform Act of 2009 eight policy objectives: section 85020)

- Coequal goals, water supply and environmental resources = *yes*
- Protect and enhance values of the Delta as an evolving place = *yes*
- Restore Delta ecosystem = *yes*
- Promote statewide water efficiency = *neutral*
- Improve water quality = *yes*
- Improve water conveyance and expanded water storage = *yes*
- Reduce risks = *yes*
- Governance structure = *neutral*

Aqueduct Protection Projects

Are these projects on islands that are critical to the Delta? What Islands are Critical?

- Schools
- Hospitals
- Police Stations
- Fire Stations
- Marinas
- Public Access
- Recreation
- Waster Water Facilities
- Solid Waste Facilities
- Sewage Treatment Plants
- Water Wells
- Tank Farms
- Gas/Oil Wells
- Gas/Oil fields
- PG&E Natural Gas Wells
- Liquid Gas lines
- Habitat
 - Aquatic
 - Terrestrial
- Agriculture
- Delta As Place
- Legacy Towns (i.e)
 - Isleton
 - Walnut Grove
 - Franklin
 - Hood
 - Locke
 - Clarksburg
 - Thornton
- Ports
 - Stockton
 - Sacramento
- Export Water Supply
 - State Water Project
 - Central Valley Project

INFRASTRUCTURE of the LEGAL DELTA and SUISUN MARSH

Each of these layers may be turned on/off under the PDF document's 'Layers' tab.

- Legal Delta boundary
- Suisun Marsh boundary
- Gas and Oil Production Field
- Major Highway
- Railroad
- Transmission Line
- Mokelumne Aqueduct
- Deep-Water Ship Channel
- Park
- Boat Launch
- Natural Gas Storage
- Airport
- Ferry
- Bridge
- Major Water Diversion
- Water Diversion (other)

Traffic Flows
average number of vehicles per day

- 130,000 - 210,000
- 63,000 - 130,000
- 43,500 - 63,000
- 12,200 - 43,500
- 0 - 12,200

Scale: 0 to 10 Miles / 0 to 10 Kilometers

Aqueduct Protection Projects

What are DWR's and the RD's roles and responsibilities for project implementation?

▪ RD

- Design
- Permitting and CEQA
- Bidding
- Contracting
- Construction Management
- Completion Reports

▪ DWR

- Technical Assistance
- Local Assistance Funding
- Funds Management and Bond Accountability to ensure State interests

Aqueduct Protection Projects

Can we approve projects prior to approval of CEQA?

Yes

Project Funding Agreement Language:

“Work that is subject to the California Environmental Quality Act (CEQA) shall not proceed under this Agreement until documents that satisfy the CEQA process are received by the Department’s Project Engineer and the Department has completed its CEQA compliance. Work that is subject to a CEQA document shall not proceed until and unless approved by the Department’s Project Engineer. Such approval is fully discretionary and shall constitute a condition precedent to any such work for which it is required. Once CEQA documentation has been completed, the Department will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.”

Aqueduct Projects Staff Recommendation

As required by the Senate Bill xx1, California Water Code 83002 (a)(1), FESSRO Staff requests your approval of the recommended projects as listed in the handout ([Attachment A](#))



Questions?



Department of Water Resources
FESSRO Staff Recommendation
Delta Aqueduct Protection Projects
June 25, 2010

Item:

Approval of the Delta Levees Special Flood Control Projects that protect aqueducts that cross the Delta.

Grantees:

Reclamation District 684 (Lower Roberts Island), 2024 (Orwood and Palm Tracts), 2038 (Lower Jones Tract), 2039 (Upper Jones Tract), and 2072 (Woodward Island)

Summary:

In response to the Project Solicitation Package (PSP) for levee improvements that protect “municipal and industrial water supply aqueducts that cross the Delta” [CWC 83002(a)(1)], DWR received 12 proposals from five reclamation districts. These proposals were scored according to criteria in the PSP and 10 projects are recommended for funding at a total cost of approximately \$41.3 million (\$6.1 local share plus \$35.2 State cost share). The recommended projects improve approximately 215,000 linear feet (41 miles) of non-project levees or about 4 percent of the total non-project levees in the Delta at the State cost of less than a million dollars per levee mile. All proposals are for levee improvement projects to increase protection of the East Bay Municipal Utility District’s (EBMUD) water conveyance facility, the Mokelumne Aquaduct. EBMUD has indicated its support for DWR’s FloodSAFE Environmental Stewardship and Statewide Resources Office (FESSRO) staff recommendations.

DWR released the Near-Term Guidelines for public comment in December 2009. After consideration of public comments, the Final Near-Term Guidelines and PSP were released on February 16, 2010. The selection and scoring criteria for the recommendations contained in this agenda item were published in the PSP and are included in Attachment D. These published criteria were used to evaluate the proposals and form the basis for establishing DWR’s FESSRO staff recommendations.

Recommendation:

DWR’s FloodSAFE Environmental Stewardship and Statewide Resources Office staff recommends approval of Projects A-J, as shown in Attachment A.

Background:

The Delta Levees Special Flood Control Projects (Special Projects) provides both technical and financial assistance to the local levee maintaining agencies for levee improvement and habitat projects in the Delta. The Special Projects is authorized under the California Water Code §§12300 – 12318. The primary purpose of the Special Projects, as defined in the CWC §12311(a), is “the protection of discrete and identifiable public benefits, including the protection of public highways and roads, utility lines and conduits, and other public facilities, and the protection of urbanized areas, water quality, recreation, navigation, and fish and wildlife habitats,

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and other public benefits. The program shall also include net long-term habitat improvement.” One of the requirements to participate in the Special Projects is the project has to result in no net loss of habitat in the Delta, and the program as a whole must provide net habitat enhancement. The State cost share can be as high as 100% of the project cost.

The Special Projects is part of FloodSAFE Programs managed by DWR and funded by proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006, as mandated by Senate Bill XX 1 (Perata 2008), which states: *“not less than thirty-five million dollars (\$35,000,000) shall be expended by the department for projects to reinforce those sections of the levees that have the highest potential to suffer breaches or failure and cause harm to municipal and industrial water supply aqueducts that cross the Delta and which are vulnerable to flood damage, including the installation of scour protection on the supports of the aqueducts in those areas located adjacent to the sections of the levees that have been identified as having the highest risk for breaches or failure.”*

Selection Criteria:

All proposals were reviewed and evaluated based on the criteria established in the Near-Term Guidelines and according to the scoring established in the PSP. These criteria include levee proximity to aqueduct, life safety, construction scheduling, habitat mitigation, ecosystem enhancement, a clear project description, and partnership funding agreements. Proposals were scored and ranked, and the projects accomplishing the highest ranking are included in the FESSRO staff recommendation. The Levee Repair and Rehabilitation Projects Solicitation Package is included as Attachment B. Notes from staff evaluations of proposals are included in Attachment C.

Also, as part of the proposal evaluation process, Special Projects staff ensured coordination within DWR as well as external stake holders. The recommended project list was forward to representatives from the Department's Bay Delta Conservation Plan (BDCP), Delta Habitat Conversation and Conveyance Program (DHCCP), and Bay Delta Office (BDO) programs to be reviewed for potential conflicts. The coordination has resulted in the conclusion that the recommended projects either benefit or have no significant effect on other DWR interests in the Delta. Staff also met with representatives from the Department of Fish and Game, U. S. Army Corps of Engineers, and EBMUD, and arrived at the same conclusion, i.e., the recommended projects either benefit or have no significant effect other projects.

State Cost Share

The discussion of State cost share is included in the Near-Term Guidelines. The cost sharing formula has been designed not only to assist the local agencies to implement projects also to provide incentives to local agencies in meeting the goals

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of the program, i.e., raising the levees to the HMP standard, and achieving the Delta Specific PL 84-99 standard. The State cost sharing formula provides opportunities for local agencies to participate in the Special Projects and has the following three parts.

1. The State Base Cost Share

All local agencies eligible under the Special Projects may receive a 90% State Base Cost Share for projects eligible as a Hazard Mitigation Plan (HMP) work. Eligible local agencies in the primary zone of the Delta proposing PL 84-99 projects may receive a 75% State Base Cost Share. The State Base Cost Share for the PL 84-99 works in the secondary zone of the Delta is reduced to 50% of the project cost.

2. Alternative State Share

The local agencies in the secondary zone of the Delta may receive an additional 25% if they complete a Local Agency Benefit Assessment (LABA). DWR has developed a methodology for preparing LABA and will cover 75% of the preparation cost up to a maximum of \$20,000.

3. Enhanced State Cost Share

This component is designed to provide incentives to local agencies while achieving the goal of the program. Local agencies may receive up to 20% increase in total State cost share if they design their projects to achieve significant contribution to specific public purposes as discussed below.

- a. Demonstrate how the proposed project contributes to emergency response and/or preparedness.
- b. Contribute to the program-wide net habitat improvement by incorporating habitat enhancement or ecosystem restoration features.
- c. Demonstrate how the proposed project contributes to subsidence control or reversal.
- d. Demonstrate the proposed project increases protection of water quality and water supply reliability and includes features to protect transportation or other public infrastructures.
- e. Provide for the reuse of the dredged material and demonstrate savings to the program.
- f. Secure funding outside of the Delta Levees Program through partnership with entities benefiting from the proposed project.

Delta Interim Plan Outline Consistency:

In the absence of published Delta Stewardship Council (DSC) criteria, DWR staff assessed the project consistency of the FESSRO staff recommended Special Projects with the Delta Interim Plan Outline:

- 1) Coequal goals of water supply and environmental resources
-Yes
- 2) Protect and enhance values of the Delta as an evolving place

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- Yes (Improves levee integrity)
- 3) Restore Delta ecosystem
 - Yes (Legislative mandates of AB 360)
- 4) Promote statewide water efficiency
 - Neutral
- 5) Improve water quality
 - Yes (Protects Water Quality)
- 6) Improve water conveyance and expand water storage
 - Yes (Maintains existing conveyance)
- 7) Reduce risks
 - Yes (to 5 islands and major infrastructure, see Attachments E and F)
- 8) Governance structure
 - Neutral

CALFED Record of Decision Consistency

For an additional check on applicability of these projects to Delta sustainability the projects were evaluated and found to support several of the CALFED goals stated below.

- Achieve Base Level Protection (HMP)
- Uniformly improve Delta levees to PL84-99
- Establish stable funding source for levee works
- Coordinate permitting processes

CEQA Compliance:

As a responsible agency DWR is charged with ensuring proper attention to CEQA. For Special Projects CEQA compliance is completed by the grantee, i.e., the local agency for each project. The Department, acting as a Responsible Agency, completes its own independent review of CEQA documents and includes the following language in the Project Funding Agreements that are signed by both the Department and Levee Maintaining Agencies (Reclamation Districts):

“Work that is subject to the California Environmental Quality Act (CEQA) shall not proceed under this Agreement until documents that satisfy the CEQA process are received by the Department’s Project Engineer and the Department has completed its CEQA compliance review. Work that is subject to a CEQA document shall not proceed until and unless approved by the Department’s Project Engineer. Such approval is fully discretionary and shall constitute a condition precedent to any such work for which it is required. Once CEQA documentation has been completed, the Department will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.”

Indemnity:

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FESSRO staff takes measures to limit State liability for Special Projects. The following standard indemnity language is included in each Project Funding Agreement.

“Local Agency, its Engineer, contractors, subcontractors, and their respective agents and employees required for performing any work for the Project shall act in an independent capacity and not as officers, employees, or agents of the State. Any review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Local Agency’s responsibility for its Project. Local Agency shall cooperate in the conduct of any State review or inspection.”

“The Local Agency shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liability for all claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including but not limited to, those arising from the planning, design, construction, maintenance and operation of levee rehabilitation measures on <name> Island for this Project and any breach of the terms of this Agreement. The Local Agency shall require contractors to name the State, its officers, agents, and employees as additional insured on their liability insurance for activities undertaken pursuant to this Agreement. The Local Agency shall also require its contractors to have applicable performance and payment bonding in place before commencing work. The Local Agency’s indemnity and related obligations under this Agreement also extend to any similar Department indemnity and related obligations with the U.S. Army Corps of Engineers for emergency assistance, response and rehabilitation of the Local Agency’s facilities and the Local Agency hereby expressly assumes those obligations.”

Consequences if Approved:

FESSRO staff believes the recommended projects address the intent of the California Water Code. The recommended projects will reinforce the levee section protecting the Mokelumne Aqueduct, a water conveyance facility managed and operated by the EBMUD. In addition to protecting the aqueduct, these projects will increase the level of protection for other local assets on the islands and minimize the risk of flooding.

- The requirements of Water Code Section 83002(a)(1) will be met.
- The Levee Maintaining Agencies will be able to put the projects out to bid soon, beginning with the most critical projects this summer.
- Construction will provide employment to an economically depressed region.
- Levee stability will be improved for segments which directly protect the water supply for East Bay communities.
- The Delta will be maintained in its current configuration, thereby maintaining all options during the development of the Delta Plan by the DSC.

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- Provide additional flood protection in excess of Base level protection for Delta Islands that protect such public benefits as water quality, the ecosystem, life and personal property, agricultural production, cultural resources, recreation , and local and statewide infrastructure.

Consequences if not approved:

SB XX 1, codified as CWC §83002(a)(1), mandates DWR to expend no less than \$35 million on levee projects protecting aqueducts crossing the Delta. The statute will expire on June 30, 2010 and the funds will revert back to the source, which is Proposition 1E.

- The legislative mandate of Water Code Section 83002(a)(1) (aka SB XX 1) will not be met.
- Funds for implementing approved projects must be reserved before June 30, 2010 or they will revert.
- Their opportunity to provide jobs in an economically depressed region will be lost.
- Levee stability on five islands will remain un-improved.
- Water supply and reliability for the East Bay will remain at its current level of risk.

Attachments:

Attachment A	List of projects recommended by DWR staff for approval
Attachment B	Levee Repair and Rehabilitation Projects Solicitation Package
Attachment C	Notes from staff evaluations of proposals
Attachment D	Near-Term Guidelines, February 2010
Attachment E	Map showing Infrastructure of the Legal Delta (Detail)
Attachment F	Map showing Infrastructure of the Legal Delta & Suisun Marsh
Attachment G	Maps showing Locations of the Proposed Projects

Attachment A

List of Projects Recommended by FESSRO Staff for Approval